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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 110.

THE AMERICAN FILE COMPANY, WILLIAM F. SAYLES, ET AL., APPELLANTS,

vs.

JOHN W. GARRETT, ROBERT GARRETT, AND THOMAS HARRISON GARRETT, COPARTNERS AS ROBERT GARRETT & SONS.

No. 111.

WILLIAM F. SAYLES ET AL., APPELLANTS,

vs.

JOHN W. GARRETT, ROBERT GARRETT, AND THOMAS HARRISON GARRETT, COPARTNERS AS ROBERT GARRETT & SONS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED OCTOBER 13, 1880.

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a At a circuit court of the United States for the first circuit and district of Rhode Island, begun and holden at Providence, in said district, on the fifteenth day of June, A. D. 1880.

Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, for the first circuit, presiding.

The following cause, among others, was disposed of:

1 *Bill of complaint.—Filed April 6, 1878.*

Circuit court of the United States, district of Rhode Island, ss:

ROBERT GARRETT & SONS
vs.
AMERICAN FILE COMPANY AND OTHERS. } In equity. No. 981.

Charles Hart, Abraham Payne, counsel for complainants; James Tillinghast, counsel for respondents.

To the judges of the circuit court of the United States for the district of Rhode Island:

John W. Garrett, Robert Garrett, and Thomas Harrison Garrett, all of Baltimore, in the State of Maryland, and all citizens of said State of Maryland, and copartners, doing business at said Baltimore under the firm name of Robert Garrett & Sons, bring this their bill of complaint against the American File Company, a corporation created by the general assembly of the State of Rhode Island, and established and transacting business in the town of Lincoln, in said State of Rhode Island; William F. Sayles,
2 Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederic C. Sayles and Debbie C. Sayles, wife of said Frederic C., Alvin F. Jenks, John R. Fales, Frederic Bates, and Louise A. Thornton, widow of Simon S. Thornton, deceased, all of Pawtucket, in said State of Rhode Island; William S. Slater, John R. Bartlett, Edward P. Taft, Cyrus Taft, Henry A. Bartlett, William Russell, and Samuel W. Foster, all of the city of Providence, in said State of Rhode Island; Joseph E. Cole, of Woonsocket, in said State of Rhode Island; Stephen A. Jenks and James Whittle, both of said Lincoln; Horatio Rogers, of said Providence, as surviving trustee of the estate of James Y. Smith, late of said Providence, deceased, under that deed of trust from said James Y. Smith, in his life to him, said Rogers and Charles A. Nichols, late of said Providence, deceased, bearing date on the eighteenth day of March, 1876, and also as surviving administrator of the estate of said James Y. Smith, deceased, duly appointed and qualified by the municipal court of said Providence, exercising probate jurisdiction therein, and Charles F. Mason, Earl Philip Mason, and Arthur L. Mason, all of said Providence, as trustees of the estate of Earl P. Mason, late of said Providence, deceased, under that trust-deed to them from said Earl P. Mason, in his life, bearing date on the eighteenth day of September, 1876, and also as administrators of the estate of said Earl P. Mason, deceased, duly appointed and qualified by said municipal court of said Providence; and all said defendants being citizens of said State of Rhode Island, and thereupon complain and say that said American File Company is a manufacturing company, incorporated by a special act of the general as-

sembly of said State of Rhode Island, enacted at the May session thereof, A. D. 1863, and duly organized thereunder, and located and transacting business, and whose manufactory is, and always has been, established in said town of Lincoln.

That by the special provisions of said act of incorporation, as by the same when produced will appear, and also by the statutes of said State of Rhode Island in such cases provided, in force at the times of the transactions hereinafter referred to, all the members and stockholders of said company, in case of failure or neglect by said company or its officers to file in the town clerk's office of the town where the manufactory of said company was established, the certificates required by said statutes were made, jointly and severally, liable for all the debts of said company existing at the time of such failure or neglect, and for all that should be contracted before such certificate should be filed. And your orators aver that said company, or its officers, never did file any certificate in the town clerk's office of said Lincoln, where the manufactory of said company was established as required by their said act of incorporation and by said statutes, so as to exempt the stockholders of said company from personal liability as aforesaid, for the debts of said company.

3 And your orators further show that your orators are judgment creditors of said American File Company, under a final judgment rendered against said company in favor of your orators by the supreme court of said State of Rhode Island, at the term thereof held in and for the county of Providence on the fourth Monday of March, 1876, for the sum of one hundred and thirty-two thousand six hundred and eleven dollars and forty-three cents, debt or damages, as of the twenty-third day of June, 1876, and fifty-one dollars and ten cents costs of suit, as by reference to said judgment still remaining of record in said supreme court, or an exemplified copy thereof, when produced, will appear, and which judgment still remains in full force and wholly unpaid and writ of execution has been issued thereon, and has been returned by the officer charged with the service thereof wholly unsatisfied, and that he could not find any goods, chattels, or real estate of said company whereon to levy the same.

And your orators further show that their action in which their said judgment was rendered was commenced on the seventeenth day of May, 1875, and that the causes of action upon which said judgment was rendered were the one hundred and nineteen money bonds of said American File Company held by your orators, all bearing date on the first day of January, 1870, and all made payable to bearer five years after date, with interest at the rate of ten per centum per annum, payable semi-annually, according to the interest coupons attached thereto, and which bonds were of the numbers and denominations following, viz:

Ten bonds, numbered 31 to 40, both inclusive, for $100 each.
Five bonds, numbered 45 to 49, both inclusive, for $100 each.
Thirty bonds, numbered 60 to 89, both inclusive, for $500 each.
Two bonds, numbered 105 and 106, for $500 each.
Twenty bonds, numbered 109 to 128, both inclusive, for $500 each.
Twenty bonds, numbered 171 to 190, both inclusive, for $1,000 each.
Thirty-four bonds, numbered 217 to 250, both inclusive, for $1,000 each.

No part either of the principal or interest of said bonds ever having been paid.

And your orators further show that all said defendants are stockholders in said American File Company, and as stockholders therein that all said defendants, except said Horatio Rogers and except said Charles F. Mason, Earl Philip Mason, and Author L. Mason, are individually and personally and jointly and severally liable for your orators' debt aforesaid against said company, and for the payment of the same to your orators, and that said James Y. Smith and Earl P. Mason, deceased, were in their life-time respectively stockholders in said company and individually and personally and jointly and severally liable for said debt, and that said estates in the hands of said Rodgers and of said Charles F., Earl Philip, and
4 Arthur L. Mason respectively, as respectively trustees and administrators as aforesaid, are also liable therefor, and for the payment of the same to your orators, according to the statutes aforesaid of said State of Rhode Island, in such cases provided.

Wherefore and inasmuch as your orators can only have full and adequate relief in a court of equity:

To the end, therefore, that said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, said American File Company under its corporate seal, and said other defendants upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they severally thereunto particularly interrogated.

And that said defendants, except said Horatio Rogers and except said Charles F. Mason, Earl Philip Mason, and Arthur L. Mason, may be declared to be individually and personally and jointly and severally liable for the debt aforesaid of said company to your orators, and may be severally decreed to pay the same to your orators accordingly, and that said estates in the hands of said Horatio Rogers, as trustee, and as administrator as aforesaid, and in the hands of said Charles F. Mason, Earl Philip Mason, and Arthur L. Mason, as trustees and as administrators as aforesaid, may severally be declared to be liable for said debt and said trustees and administrators respectively decreed to pay the same to your orators from said estates accordingly.

And for such other or further relief in the premises as to your honors shall seem meet and your orators' case shall require.

May it please your honors to grant to your orators the most gracious writ of subpœna of the United States of America, to be directed to the said American File Company, William F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederic C. Sayles and Debbie C. Sayles, wife of said Frederic, Alvin F. Jenks, John R. Fales, Frederic Bates, and Louise A. Thornton, widow of Simon S. Thornton, deceased, William S. Slater, John R. Bartlett, Edward P. Taft, Cyrus Taft, Henry A. Bartlett, William Russell, and Samuel W. Foster, Joseph E. Cole, Stephen A. Jenks, and James Whittle, and said Horatio Rogers, as trustee and as administrator of the estate of said James Y. Smith, deceased, and said Charles F. Mason, Earl Philip Mason, and Arthur L. Mason, as trustees and as administrators of the estate of said Earl P. Mason, deceased, thereby commanding them and every of them at a certain day and under a certain pain, therein to be inserted, personally to be and appear before your hon-

5 ors in this honorable court and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orators will ever pray.

JOHN W. GARRETT,
ROBERT GARRETT,
THOMAS H. GARRETT,
ROBERT GARRETT & SONS,
By their solicitor, JAMES TILLINGHAST.

JAMES TILLINGHAST,
Complainant's Solicitor.

6 *Answer.—Filed November* 13, 1878.

To the judges of the circuit court of the United States for the district of Rhode Island:

The joint and several answer of the American File Company, a corporation created by the general assembly of the State of Rhode Island, and established and transacting business in the town of Lincoln, in said State of Rhode Island, William F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederic C. Sayles and Debbie C. Sayles, wife of said Frederic' C. Sayles, Alvin F. Jencks, John R. Fales, Frederick Bates, and Louise A. Thornton, widow of Simon S. Thornton, deceased, all of Pawtucket, in said State of Rhode Island; William F. Slater, John R. Bartlett, Edward P. Taft, Cyrus Taft, Henry A. Bartlett, William Russell, and Samuel W. Foster, all of the city of Providence, in said State of Rhode Island; Joseph E. Cole, of Woonsocket, in said State of Rhode Island; Stephen A. Jencks and James Whittle, both of said Lincoln; Horatio Rogers, of said Providence, as surviving trustee of the estate of James Y. Smith, late of said Providence, deceased, under that deed of trust from said James Y. Smith in his life-time to him, said Rogers, and Charles A. Nichols, late of said Providence, deceased, bearing date on the 18th day of March, A. D. 1876, and also as surviving administrator of the estate of James Y. Smith, deceased, duly appointed and qualified by the municipal court of the city of Providence, exercising probate jurisdiction therein, and Charles F. Mason, Earl Phillip Mason, and Arthur L. Mason, all of said Providence, as trustee of the estate of Earl P. Mason, late of said Providence, deceased, under that deed of trust to them from said Earl P. Mason, in his life, bearing date the 18th day of September, 1876, and also as administrator of the estate of said Earl P. Mason, deceased, duly appointed and qualified by said municipal court of said Providence, and all of said respondents being citizens of said State of Rhode Island, to the bill of complaint of John W. Garrett, Robert Garrett, and Thomas Harrison Garrett, all of Baltimore, in the State of Maryland, and all citizens of said State of Maryland, and copartners doing business at said Baltimore under the firm name of Robert Garrett & Sons.

7 These respondents, now and at all times, saving and reserving unto themselves all and all manner of benefit of exception that can or may be had or taken to the manifold errors, uncertainties, and imperfections in said complainants' said bill of complaint contained, for answer

thereunto, or unto so much and such parts thereof as these respondents are advised are material or necessary for them to make answer unto, these respondents, answering, say:

First. These respondents admit that said American File Company is a manufacturing company incorporated by a special act of the general assembly of said State of Rhode Island, enacted at the May session thereof, A. D. 1863, and duly organized thereunder, and located and transacting business, and whose manufactory is and has been established in the town of Lincoln for the five or six years last past, but not always, as alleged in said bill. And the respondents, further answering, admit that by the special provisions of said act of incorporation, and also by the statutes of said State of Rhode Island in such cases provided, in force at the time of the transaction hereafter referred to, all the members and stockholders of said company, in case of failure or neglect by said company or its officers to file in the town clerk's office of the town where the manufactory of said company was established the certificate required by said statutes, were made, jointly and severally, liable for all the debts of said company existing at the time of such failure or neglect and for all that should be contracted before such certificate should be filed. And these respondents further admit that said company or its officers never did file any certificate in the town clerk's office of said Lincoln, where the manufactory of said company was established, as required by their said act of incorporation, and by said statutes, so as to exempt the stockholders of said company from personal liability, as aforesaid, for the debts of said company.

Second. And these respondents, further answering, admit that the complainants are judgment creditors of said American File Company, under a final judgment rendered against said company, in favor of the complainants, in the supreme court of the said State of Rhode Island, at the term thereof held in and for the county of Providence on the fourth Monday of March, 1786, for the sum of one hundred thirty-two thousand six hundred and eleven dollars and forty-three cents debt or damage, as of the 23d day of June, 1876, and fifty-one dollars and ten cents costs of suit, and which judgment still remains in full force and wholly unpaid, and that writ of execution has been issued thereon, and has been returned by the officer charged with the service thereof wholly unsatisfied, and that he could not find any goods, chattels, or real estate of said company whereon to levy the same.

8 Third. These respondents, further answering, admit that the action in which the judgment was rendered was commenced on the 17th day of May, 1875, and that the causes of action on which said judgment was rendered were the one hundred and nineteen money bonds of said American File Company held by the complainants, all bearing date on the 1st day of January, 1870, and all made payable to bearer five years after date, with interest at the rate of ten per centum per annum, payable semi-annually, according to the interest coupons attached thereto, and which bonds were of the numbers of denominations following, viz:

Ten bonds, numbered 31 to 40, both inclusive, for $100 each.
Five bonds, numbered 45 to 49, both inclusive, for $100 each.
Thirty bonds, numbered 60 to 89, both inclusive, for $500 each.
Two bonds, numbered 105 and 106, for $500 each.
Twenty bonds, numbered 109 to 128, both inclusive, for $500 each.
Twenty bonds, numbered 171 to 190, both inclusive, for $1,000 each.

Thirty-four bonds, numbered 207 to 250, both inclusive, for $1,000 each.

And these respondents further admit that no part, either of the principal or interest of said bonds, have ever been paid, except the first coupons on said bonds, which were paid.

Fourth. And these respondents, further answering, deny that they, or any of them, are, individually or personally, or jointly or severally, or as executors or administrators, or trustees, liable for the aforesaid debt of the complainants against said company, or for the payment of the same to the complainants, but these respondents, further answering, admit that they might have been so liable, and as set forth in said bill of complaint, if it had not been for the matters and things hereinafter set forth; that is to say, these respondents, further answering, aver that prior to the year 1862 one Allen A. Chapman, together with other persons of the city of Baltimore, in the State of Maryland, were engaged in the manufacture of files in the said city of Baltimore, under the corporate name of the American File Company, claiming to be the owners of a patent for a new and useful invention for cutting files by machinery; that during said year 1862 said parties induced certain persons, including these respondents, then being residents of the State of Rhode Island, to obtain a charter from the general assembly of Rhode Island, and to organize a company thereunder, under the name of the American File Company, for the purpose of purchasing from the American File Company in Baltimore their property aforesaid, consisting principally of the patent aforesaid, and for the carrying on in Rhode Island the business of manufacturing files; that
9 such charter was obtained from the general assembly of Rhode Island, and company organized thereunder on the day of , A. D. 186 ; that said Chapman and his Baltimore associates, in consideration of the conveyance of the property aforesaid of said Baltimore company to the American File Company in Rhode Island, received a large proportion of the stock of the company in Rhode Island, in the aggregate nearly one-half of the capital stock thereof. And these respondents, further answering, say that said Rhode Island company, on or about the day of , A. D. 186 , commenced the business of manufacturing files in the town of Pawtucket, in Rhode Island, and continued the same for several years thereafter, but with great loss in the business; that during all said time the said Chapman and the other Baltimore stockholders were directors in said company and active managers of the same; that at the commencement of the year 1870 there was outstanding a large indebtedness of the said company, represented by promissory notes of the company, endorsed by the said Chapman and other of the stockholders in Rhode Island and Baltimore, which said promissory notes had been, in pursuance of agreement, endorsed and negotiated by the stockholders substantially in the proportion of the stock held by them; that is to say, the Baltimore stockholders either held or had negotiated upon their endorsement promissory notes bearing the same proportion to the whole indebtedness that the stock held and owned by them bore to the whole amount of the stock of the company.

These respondents, further answering, aver that at this time, said indebtedness being very large in amount, the said endorsers were desirous of reducing the same, and various plans were proposed to effect that

end. Among others, it was proposed that the several stockholders should each contribute, in proportion to the stock held by them, an amount sufficient to pay the debts of the company, and should receive therefor the bonds of the company, secured by a mortgage of the company on their corporate property, and bearing a high rate of interest, to an amount equal to the sum so contributed respectively. Accordingly in the early part of the year 1870, at a meeting of the stockholders, called for that purpose, it was voted that the bonds of the company be issued to the amount of one hundred and twenty-five thousand dollars, to bear interest at the rate of ten per cent., and to be secured by a mortgage of the real and personal property of the company. Said mortgage was executed and bonds issued thereunder to the amount of ninety-four thousand dollars, which were received and taken by the Baltimore and Rhode Island stockholders in the proportion in which the stock was held by the two classes of stockholders, the proceeds therefrom being applied to retire a like amount of the indebtedness of the company. Subsequently and in the month of July, 1871, a further amount of about ninety-six thousand dollars of bonds were issued without authority of the stockholders, but which were taken by the stockholders in like manner in proportion of their stock, and a like amount of the indebtedness of the company retired.

(But although the bonds last above named were issued without authority previously given by a vote of the company, they were issued with the knowledge of the stockholders, and their issue was ratified by the stockholders, and the same were and are valid and binding to the same extent upon the company and the stockholders, as if their issue had been authorized by a vote of the company.—Amended by consent. H. P., clerk.)

And these respondents, further answering, say that before the issuing of any of the bonds as aforesaid, subscription papers were drawn up for the purpose of obtaining the signatures of the several stockholders, binding them to take their several proportions of the bonds, which were duly signed by stockholders in Rhode Island, and signed by the said Allen A. Chapman, for himself and in behalf of the other stockholders in Baltimore. The proper proportionate amount of bonds for the said Chapman and the other Baltimore stockholders, being the amount for which said Chapman had subscribed, was sent to said Allen A. Chapman, and charged to him on the books of the company, as were all the other bonds charged to the parties to whom the same were respectively delivered.

The said Chapman subsequently duly remitted to the company a like amount of the promissory notes of the company, which had been taken up by the said Chapman for himself and the Baltimore stockholders, and which were duly cancelled.

The bonds of the said company so issued were all of the same tenor, all being dated January 1st, 1870, and payable in five years after date, with coupons attached, interest at the rate of ten per cent. semi-annually. No interest was ever paid on said bonds, except the first coupons as aforesaid. The said Allen A. Chapman continued a director and manager in the company until his failure hereinafter mentioned in the autumn of 1872.

And these respondents, further answering, say that in the month of September, A. D. 1872, the firm of Kirkland, Chase & Co., of which said Chapman was a partner, failed, and the firm, and each of the members thereof, were subsequently adjudicated bankrupts, under the act of Congress, and

made assignments of their property, copartnership and individual, for the benefit of the creditors.

And these respondents, further answering, say that after the failure of said firm and said Chapman, the said Chapman sent to the said Garrett and Sons all the bonds of the American File Company then held by him, or in his possession, being bonds issued as aforesaid by the said American File Company, and being the bonds held by the said Garrett &
11 Sons, and upon which the judgment herein before mentioned was obtained, said bonds being sent to the said Garrett and Sons by the said Chapman, without the payment of any consideration therefor by said Garrett and Sons, or any previous notice to Garrett and Sons of his intention so to do. And the said Garrett and Sons, though they never paid any consideration for said bonds, yet there afterwards claimed to hold said bonds as security for a specific loan of fifty thousand dollars, theretofore made by them to the said Kirkland, Chase & Co., in May, 1872, and to have no other interest in said bonds than as security as aforesaid.

And these respondents are informed and believe and therefore aver that the assignees in bankruptcy of the said firm and said Chapman refused to recognize the claim of the said Garrett and Sons, or that they had any title to or interest in, or lien upon said bonds, and claimed that said bonds should be surrendered to them, as belonging to the assigned estates. And thereupon the said assignees entered into negotiations with certain of the stockholders of the American File Co., in the State of Rhode Island, for the transfer to them of the said bonds for the sum of fifty cents upon the dollar, upon the principal of said bonds, with an understanding of said stockholders to guarantee the said Chapman and the assigned estate against any liability for the indebtedness of the American File Co. The assignees invited the proposition from the said stockholders, assuring them if made it would probably be accepted. The proposition was made accordingly, but before its acceptance the complainants effected a general settlement with the said assignees of various points and matters in dispute between them touching several parcels of property; the said complainants becoming thereby the purchasers from said assignees of the said bonds of the American File Co., among other property, on precisely the same terms and conditions as were contained in the offer of stockholders of the American File Company aforesaid; the said complainants giving to the assignees an agreement in which they covenanted and agreed to indemnify the said assignees against loss or damage of any kind as holders of the stock of the American File Co. in their hands as assignees of said Kirkland, Chase & Co., and of said Chapman, and to indemnify the said assignees and the estate of Kirkland, Chase & Co., and the estate of said Chapman against loss or damage of any kind by reason of their releasing their claim to the said bonds of the American File Co., and to hold the said estate harmless for the transfer and release of said bonds to the complainants.

And these respondents, further answering, claim and insist that no purchaser of said bonds could acquire any other or greater right as against the stockholders of said company or their estates than those subsisting between the stockholders themselves; that no stockholder holding such bonds could give or convey, by transferring or assigning said bonds to the as-
12 signee or transferee, any right to enforce said bonds against the stockholders of the company or their estates, but only the right to enforce the same against the corporation and its property.

And these respondents, further answering, represent and aver that at the time when the said complainants took and received the bonds upon which said judgement was recovered, they had actual notice of all the circumstances under which said bonds were issued to the stockholders, and of all and singular the rights and equities subsisting between the stockholders of the company in relation thereto, and that the complainants stand on no better position and have no other or better rights than the said Chapman, the said Kirkland, Chase & Co., or the said assignees in bankruptcy could or would have had against their costockholders in said company.

And these respondents, further answering, claim and insist that if the said complainants should be permitted to enforce and collect said judgment from these respondents, as stockholders in said company, the said Chapman, Kirkland, Chase & Co. and the assigned estates would be bound to respond to these respondents for their just proportion thereof as costockholders with these respondents, and also for a just proportion of the remaining bonds taken by other stockholders than these respondents, which said proportion would equal the whole amount of the judgment herein; and that having so responded, the said Garrett & Sons would, under their agreement and guaranty aforesaid with said assignees, be obliged to indemnify the said Chapman, Kirkland, Chase & Co. and the assigned estates; that such circuity of action should be restrained and prevented by this honorable court; and that in equity and of right the said guarantee of said Garrett & Sons inures to the benefit of these respondents, and that said Garrett & Sons have assented to the release and discharge of said Kirkland, Chase & Co. and said Chapman, thereby the said Garrett & Sons have discharged these respondents from any liability, if any such existed, by reason of said bonds. And these respondents claim and insist that the facts hereinbefore set forth are a complete and perfect bar to the said complainants' bill of complaint, and to the relief therein and thereby sought, and they pray to have the same benefit therefrom as if the same were duly and formally pleaded in bar to said bill of complaint. And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these respondents.

All which matters and things these defendants are ready and willing
13 to aver, maintain, and prove as this honorable court shall direct, and

humbly pray to be hence dismissed with the reasonable costs and charges in this behalf most wrongfully sustained.

F. C. SAYLES.
W. F. SAYLES.
HORATIO ROGERS,
Trustee of the Estate of James Y. Smith.
JAMES WHITTLE.

By his solicitor,

WELCOME A. GREENE,
CHARLES F. MASON,
EARL PHILLIP MASON,
ARTHUR LIVINGSTON MASON,
Trustees of the Estate of Earl P. Mason.
SAM'L FOSTER.
WM. S. SLATER.
JOHN R. BARTLETT.
EDWARD P. TAFT.
NAHUM BATES.
FREDERIC BATES.
JOHN R. FALES.
LOUIS FAIRBROTHER.
ALVIN F. JENKS.
STEPHEN A. JENCKS.
ROBERT C. WILCOX.
LOUISA A. THORNTON.
DEBBIE C. SAYLES.
JOSEPH E. COLE.
HENRY A. BARTLETT.
CYRUS TAFT.

By their solicitors, CHAS. HART & ABRAHAM PAYNE.

STATE OF RHODE ISLAND,
Providence County, ss:

In the city of Providence, this fifth day of October, A. D. 1878, personally appeared before me the above-named Wm. F. Sayles and Frederick C. Sayles, and severally and respectively made solemn oath that the facts and statements in the foregoing answer contain, so far as they are stated as of their own knowledge, are true, and so far as they are stated on information and belief are true to the best of their information and belief.

Witness my hand and seal.

[L. S.] ARTHUR D. PAYNE,
Notary Public.

14 *Replication.—Filed November* 15, 1878.

This replication of the complainants to the answer of said defendants:

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and

insufficient to be replied unto by these repliants, without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

By their solicitor, JAMES TILLINGHAST.

15 COMPLAINANTS' DEPOSITIONS.

Deposition of John W. Garrett.

JOHN W. GARRETT, a witness produced on the part of Robert Garrett & Sons, having been duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

Ans. John W. Garrett; 58 years; Baltimore; president of a railroad and merchant.

Q. 2. Were you a member of the firm of Robert Garrett & Sons in 1872?

Ans. I was.

Q. 3. Who were the other members of the firm?

Ans. Robert Garrett and T. Harrison Garrett, my sons.

Q. 4. What was the business of that firm at that time and since?

Ans. Bankers and merchants, then and since.

Q. 5. Did your firm have dealings with the firm of Kirkland, Chase & Co.?

Ans. We had dealings with Kirkland, Chase & Co.

Q. 6. Please state the general character of the dealings of the firm of Robert Garrett & Sons with the firm of Kirkland, Chase & Co. in 1872.

Ans. The dealings consisted in advances on collaterals, the issue of sterling and other credits on securities, and dealings in sterling exchange.

Q. 7. What arrangement, if any, did the firm of Robert Garrett & Sons have with that of Kirkland, Chase & Co. in regard to the collaterals which were pledged by the latter firm to secure advances made to them by the former, that is, by Robert Garrett & Sons?

Ans. The arrangement was that advances were made on collaterals from time to time, with a general agreement that those collaterals were held as security for the entire loans and transactions made by Robt. Garrett & Sons with Kirkland, Chase & Co.; that is to say, that if a deficiency occurred on one loan, and a surplus existed on another, the surplus would be liable for any deficiency in case payments were not fully made of such deficiency.

Q. 8. What was the indebtedness of Kirkland, Chase & Co. to Robert Garrett & Sons on the 2d May, 1872. And please state whether on
16 that day any loan was made by your firm to Kirkland, Chase & Co., and, if so, to what amount.

Ans. May 2, 1872, about $620,000. A loan of $50,000 was made on May 2, 1872.

Q. 9. What security, if any, was taken by your firm for said loan of $50,000?

Ans. The securities taken were the notes mentioned in Exhibit R. G. No. 1, attached to the deposition of Allan A. Chapman.

Q. 10. What changes, if any, were made in the securities held by your firm for the loan of $50,000?

Ans. A substitution was made on May 28th, as shown by Exhibit R. G. No. 2, attached to Allan A. Chapman's deposition; and a further substitution on May 30, 1872, as shown by Exhibit R. G. No. 3, attached to Allan A. Chapman's deposition.

Q. 11. Please state whether or not the collaterals deposited with you as security for the loan of $50,000 were held by your firm subject to your general lien for balance due on all loans, advances, and transactions with the firm of Kirkland, Chase & Co.

Ans. They were held subject to our general lien for balance due Robert Garrett & Sons on all loans, advances, and transactions made with the firm of Kirkland, Chase & Co.

Q. 12. Please state whether or not you had an interview with Mr. Allan A. Chapman, a member of the firm of Kirkland, Chase & Co., in regard to the bonds of the American File Co., and, if so, state fully and in detail what occurred at said interview.

Ans. I had an interview with Allan A. Chapman, a member of the firm of Kirkland, Chase & Co., in regard to the bonds of the American File Company. I had this interview on the day of the failure of Kirkland, Chase & Co., or the day following the failure. Mr. Chapman stated that Kirkland, Chase & Co. had, on the 30th May, 1872, withdrawn the cargo of sugar ex Shiloh, and substituted the bonds of the American File Company, as described in Exhibit R. G. No. 3. He stated to me that these bonds were good not only for their face value, but for the accrued interest thereon, and that Robert Garrett & Sons would be able to not only collect the $50,000 which was loaned on the cargo of the Shiloh, but, under the general agreement between Kirland, Chase & Co. and Robert Garrett & Sons, would be able to collect a large difference which could be applied to the deficiencies due for other advances. He stated that they had placed and held their securities for Robert Garrett & Sons on and from the 30th May, and that they were in possession of his son, who had instructions to deliver them to Robert Garrett & Sons when called for. After his explanations I approved and ratified the
17 substitution stated, and requested him to have the bonds delivered to me or to the house. Mr. Chapman stated that in order to help the American File Company he had taken and paid for these bonds with the money of Kirkland, Chase & Co., and that Kirkland, Chase & Co. had carried them at considerable inconvenience for some time previously. He stated that he had not handed the statement regarding the substitution to Robert Garrett & Sons at the office, No. 7 South street, because he wished first to make an explanation to me regarding these securities of which they nor I knew nothing, and he designed to explain to me the value of the securities which had been thus substituted for the cargo of sugar ex Shiloh.

Q. 13. State whether or not your firm were aware of the removal of the cargo of sugar from the warehouse before the date of this interview.

Ans. We were not aware of the removal of this sugar before the date of this interview.

Q. 14. What knowledge, if any, did your firm, or any member thereof, have of the relations of Allan A. Chapman or the firm of Kirkland, Chase & Co. with the American File Co. at the time the bonds were received by

your firm? State whether or not you knew at that time that Allan A. Chapman was a stockholder of the American File Co. or owned any of its stock.

Ans. I knew nothing of the relations of Allan A. Chapman, or the firm of Kirkland, Chase & Co., with the American File Company prior to the time to which I have referred, when Allan A. Chapman communicated to me the information stated in my previous reply. I am not aware of either of the other members of the firm of Robert Garrett & Sons knowing anything upon this subject until I communicated to them the information given to me by Mr. Chapman on this subject. On the contrary, I learned from them that they, like myself, knew nothing whatever in regard to it. I did not know that Allan A. Chapman was a stockholder or owner of stock in that company.

Q. 15. Were your firm aware of any arrangements of A. A. Chapman with the American File Company, or parties connected therewith, other than that you have already stated?

Ans. I was not aware of any arrangement of A. A. Chapman with the American File Company, or parties connected therewith, other than that what I have already stated, and I have been informed by my partners that they also were not aware of any arrangement.

(Objection by attorney for the defendant to so much of this answer and the last preceding one as is based upon information derived from others.)

Q. 16. State whether or not your firm recognized or admitted any claim of the assignees of Kirkland, Chase & Co., or of A. A. Chapman,
18 to the bonds of the American File Company which had been pledged to you as security for loans to that firm.

Ans. My firm did not recognize or admit any claim of the assignees of Kirkland, Chase & Co., or of Allan A. Chapman, to these bonds of the American File Company which had been pledged to Robert Garrett & Sons as security for loans to that firm. Robert Garrett & Sons not only did not recognize on the part of the assignees any claim to these bonds, or to any other securities in their hands, but on the contrary these assignees, in the final settlement between them and Robert Garrett & Sons, paid Robert Garrett & Sons $5,000 in cash in addition to all the proceeds the said Robert Garrett & Sons had derived or might derive from all the securities which had been pledged to them, including the said American File Company's bonds.

Q. 17. State what was the indebtedness of the firm of Kirkland, Chase & Co. to Robert Garrett & Sons on May 30th, 1872.

Ans. $625,400.

Q. 18. What was the indebtedness of Kirkland, Chase & Co. to the firm of Robert Garrett & Sons at the time of the failure of the firm on September 12th, 1872?

Ans. About $588,000.

Q. 19. State whether or not the firm of Kirkland, Chase & Co. was or is indebted to the firm of Robert Garrett & Sons after realizing upon all the collaterals held by the latter as security for loans and advances; if so, please state the amount of such indebtedness.

Ans. The firm of Kirkland, Chase & Co. were and are indebted to Robert Garrett & Sons, after crediting all sums thus far realized from collaterals and otherwise, to the amount of $354,000, and if the amount of the file com-

pany's bonds, with interest to date (say $147,000), be collected, the indebtedness of Kirkland, Chase & Co. to Robert Garrett & Sons will still be upwards of $200,000.

Q. 20. Will the debt due by the firm of Kirkland, Chase & Co. to Robert Garrett & Sons, after the collection of the full amount of the bonds of the American File Company, with interest, as stated in answer to the last question, be paid or in any manner liquidated by the balance of the collaterals not yet realized?

Ans. Very small amounts will be realized from the balance of collaterals, probably materially less than $7,000. The present balance of indebtedness, after deducting $147,000 as the sum to be collected from the American File Company, leaves a balance of $207,000. Therefore Robert Garrett & Sons expect to make a loss by Kirkland, Chase & Co., should the amount stated be collected from the American File Company's bonds, of upwards of two hundred thousand dollars.

19 Cross-examined by A. D. PAYNE, attorney for defendants:

Q. 1. Please state whether the arrangement which you have referred to with regard to the collaterals being held by you as security for the general balance, as well as for specific loans, was in writing; and, if so, will you please annex a copy thereof to your deposition?

Ans. It was not in writing, but the agreement had been acted upon for many years, and was perfectly understood between Kirkland, Chase & Co. and Robert Garrett & Sons.

Q. 2. Had you ever before had occasion to apply or attempt to apply collaterals for a specific loan for the payment of the general balance?

Ans. The general balance in every case previously was paid promptly on presentation of the account, and therefore it was not necessary to dispose of the collaterals in order to collect that balance.

Q. 3. This general agreement, then, was one which you never before had taken any advantage of?

Ans. We always took advantage of the agreement by holding the collaterals until the payments in full were made in cash; this being our rule not only with this house, but with other houses with which we had similar transactions.

Q. 4. Please state how often you had settlements with Kirkland, Chase & Co.; and, if, when such settlements were had, did you return the collaterals held by you?

Ans. Settlements were made at regular intervals every few months, when the collaterals were delivered which were held as security for the obligations settled. I think the settlements were made quarterly. There were frequent substitutions and changes in the collaterals arising from payments on account and other settlements.

Q. 5. Was there any settlement between the firm of Robert Garrett & Sons and Kirkland, Chase & Co. on the 1st of July, 1872, or on any day between May 30th, 1872, and the date of the suspension of the house of Kirkland, Chase & Co.?

Ans. There were settlements between the firms of Robert Garrett & Sons and Kirkland, Chase & Co. on July 1st, 1872, viz, to June 30, 1872, inclusive, and on other dates between May 30th, 1872, and the date of the suspension of the house of Kirkland, Chase & Co., in which the amount

due was ascertained, but the amount was not paid, and collaterals were retained or others substituted.

Q. 6. Were the securities specified in the paper writing marked "Exhibit R. G. No. 1," attached to the deposition of Allan A. Chapman, delivered to the firm of Robert Garrett & Sons at the time the loan of $50,000 was made for which they were security?

Ans. The securities specified in the paper writing marked "Exhibit R. G. No. 1" were not delivered to Robert Garrett & Sons at the time
20 the loan of $50,000 was made, but were delivered with the agreement dated May 2d on May 6th, in pursuance of the arrangement made at the date of loan that said securities should be given.

Q. 7. Please state when the securities specified in paper writing marked "Exhibit R. G. No. 1" were withdrawn from you.

Ans. The securities specified in the paper writing marked "Exhibit R. G. No. 1" were withdrawn from Robert Garrett & Sons on May 28th, 1872.

Q. 8. Did you know at the time the cargo of sugar ex Shiloh was substituted for the securities mentioned in Exhibit R. G. No. 1, that such substitution was made?

Ans. I have no doubt Robert Garrett & Sons knew of this substitution from the fact that they delivered the collaterals mentioned in Exhibit R. G. No. 1 on receiving the pledge of the cargo mentioned in Exhibit R. G. No. 2.

Q. 9. When did it first come to your knowledge that Allan A. Chapman was a stockholder in the American File Company, or that there was any dispute in regard to the liability attached to these bonds?

Ans. I do not remember the date that I first heard that Allan A. Chapman was a stockholder, but it was some time after the date on which the transfer of the American File Company's bonds was made to Robert Garrett & Sons—I think a considerable time thereafter, and certainly after the appointment of the assignees in bankruptcy. My knowledge of the dispute occurred in connection with statements made in regard to the affairs of Kirkland, Chase & Co. in the hands of the assignees.

Q. 10. Please state whether it was not the custom of your house when you made loans on collaterals and took securities ordinarily to use printed blanks.

Ans. The house made many loans in which they did not use printed blanks, and also used printed blanks in many cases. There was no absolute custom or rule on the subject. In the transactions with Kirkland, Chase & Co. printed blanks were rarely if ever used.

JOHN W. GARRETT.

Attest:
CARROLL SPRIGG, *Examiner.*

21 *Deposition of T. Harrison Garrett.*

T. HARRISON GARRETT, a witness produced on the part of the complainants, having been duly sworn, deposes and says as follows:

Q. 1. Please state your name, age, residence, and occupation.

Ans. T. Harrison Garrett; 29 years; Baltimore; banker and merchant.

Q. 2. State what is your connection with the firm of Robert Garrett & Sons.

Ans. I am a member of the firm of Robert Garrett & Sons.

Q. 3. Please state what knowledge you had, if any, that Allan A. Chapman was a stockholder in the American File Company at the time of the transfer to your firm of the bonds of that company by the firm of Kirkland, Chase & Co.

Ans. I had no knowledge at the time of the transfer that Allan A. Chapman was a stockholder of the American File Company.

Q. 4. When did you first become aware of the fact that Allan A. Chapman was a stockholder in the American File Company?

Ans. I am unable to give the date exactly, but it was some time after the failure of Kirkland, Chase & Co.

Q. 5. Please state whether it was after the appointment of the assignees in bankruptcy.

Ans. It was after their appointment.

Q. 6. Did you ascertain after the appointment of the assignees in bankruptcy the amount of stock which Allan A. Chapman held in the American File Company?

Ans. I did not.

Q. 7. Have you ever been made aware of the amount of stock which he held in this company, as far as you know?

Ans. Not to the best of my recollection.

Cross-examination by Mr. PAYNE:

Q. 1. When did the firm of Kirkland, Chase & Co. fail?

Ans. In September, 1872.

Q. 2. Do you remember the day of the month?

Ans. Not exactly; I think about the 11th or 12th.

22 Q. 3. Please state the date on which the bonds of the American File Company were delivered to you.

Ans. They were delivered to my father at about the time of the failure. I cannot name the exact date.

Q. 4. Please state whether it was before or after the failure.

Ans. I am unable to state that.

Q. 5. At the time of the failure of Kirkland, Chase & Co. was Mr. John W. Garrett in the city?

Ans. He was at his home in the county; I do not know that he was in the city of Baltimore.

Q. 6. During the absence of Mr. John W. Garrett, did the firm of Robert Garrett & Sons transact business with Kirkland, Chase & Co.?

Ans. Yes, sir.

Q. 7. Did the firm of Robert Garrett & Sons loan money and transact other business with the firm of Kirkland, Chase & Co. without regard to whether Mr. John W. Garrett was absent from the city or not?

Ans. The business transacted during his absence was generally routine business. I cannot state whether any new transactions were made during his absence without looking at the books.

Q. 8. Would you have considered it necessary to have the sanction of Mr. John W. Garrett before loaning money to Kirkland, Chase & Co., or having transactions with them concerning the loaning of money?

Ans. He was generally consulted before new transactions were made; not always, during his absence, if securities were satisfactory.

T. HARRISON GARRETT.

Attest:

CARROLL SPRIGG, *Examiner.*

Deposition of Robert Garrett.

ROBERT GARRETT, a witness produced on the part of the complainants, after having been duly sworn, deposes and says as follows:

Examination-in-chief by Mr. COWEN:

Q. 1. Please state your name, age, residence, and occupation.

Ans. Robert Garrett; 31 years; Baltimore; merchant and banker.

23 Q. 2. What connection did you have with Robert Garrett & Sons in 1872?

Ans. I was a partner.

Q. 3. Are you still a member of the firm?

Ans. I am.

Q. 4. What knowledge did you have, if any, that Allen A. Chapman was a stockholder in the American File Company at the time of receiving the bonds of the American File Company from Kirkland, Chase & Co.?

Ans. None whatever.

Q. 5. When did you become aware that he was a stockholder in the American File Company?

Ans. My first knowledge grew out of a conference with the assignees.

Q. 6. It was, then, not till after the appointment of the assignees in bankruptcy that you became aware of the fact that he was a stockholder?

Ans. Not until after their appointment.

Q. 7. Did you ascertain the amount of stock which he held?

Ans. I did not, and don't know now.

Q. 8. Were you acquainted with the former president of the file company, Mr. Nichols?

Ans. I was, sir.

Q. 9. You can state whether you ever met him in Baltimore, and what proposition, if any, he made to you respecting the American File Company's bonds held by your firm.

Ans. Mr. Nichols came to Baltimore early in the month of April, 1874, I think. He made a proposition to us to pay the bonds of the American File Company at fifty cents on the dollar. I think there is a record of this in Mr. Nichols' handwriting, in pencil, which I now ask permission to file, in case I can lay my hands on it.

Q. 9. Will you please make diligent search to find this pencil memorandum, and attach it to your deposition if you find it?

Ans. I will do so.

Q. 10. For whom was Mr. Nichols acting?

(Objected to by Mr. Payne.)

Ans. I understood for parties interested in the American File Company.

Q. 11. You derived this information from him?

24 Ans. I cannot give any definite testimony on this point. It was

my impression. I may have had absolute knowledge at the time, but cannot so state now.

Q. 12. State whether your firm assented to the release or discharge in bankruptcy of the firm of Kirkland, Chase & Co., or Allan A. Chapman, or of any member of the firm.

Ans. It did not so assent.

ROBERT GARRETT.

Attest:

CARROLL SPRIGG, *Examiner.*

DEFENDANTS' DEPOSITIONS.

Deposition of Allan A. Chapman.

Present, John K. Cowen and E. J. D. Cross, esquires, for the complainants, and Arthur D. Payne, esq., for the defendants.

ALLAN A. CHAPMAN, a witness produced on behalf of the American File Company and others, the defendants, after having been duly sworn according to law, deposes and says as follows:

Question 1. Mr. Chapman, please state your name, age, residence, and occupation.

Ans. Allan A. Chapman; age, 65 next Monday; residence, Baltimore; occupation, nothing at the present time.

Q. 2. What was your occupation in the years 1871 and 1872?

Ans. I was a partner in the house of Kirkland, Chase & Co.

Q. 3. Did the firm of Kirkland, Chase & Co. suspend or go into bankruptcy on the 12th September, 1872?

Ans. They did suspend 12th Sept., 1872.

Q. 4. Previous to and at the time of the suspension were Kirkland, Chase & Co. in possession of any bonds of the American File Company?

Ans. Yes.

Q. 5. Please state how you came into possession of these bonds, and on what terms. (This question was objected to by Mr. Cowen.) I want you to give an account of how you came into possession of these bonds.

Ans. I received the bonds in payment of notes which he held. (Mr. Cowen objected to the above question and answer.)

Q. 6. How did you get into possession of these bonds?

Ans. After the file company, in which I was a stockholder, was established; after the company got well going, we found it necessary to go into debt to carry on the business properly. We did go into debt for a time, until the debt got so large that the directors and stockholders in Rhode Island finally wrote to me requesting me to take the matter into consideration, and suggesting that the Baltimore stockholders take their proportion of the debt. I answered that we would do so, and they sent me the notes of the company—a little over two-fifths of the stock was held in Baltimore. They sent me notes of the company for our proportion of the debt, which I negotiated and sent to them the proceeds. We continued to carry them until they increased to such an amount that they became burdensome. A proposition was then made to issue bonds secured by mortgage upon the property of the company. They thought they ought to have more security

than the mere notes of the company. The proposition was then made to issue bonds. We did so, for the pro rata amount of which I returned the notes of the company and received an equal amount of bonds. In that way I came in possession of the bonds.

(Mr. Cowen objected to the above answer, because it is irrelevant, and because it states the contents of written papers without producing them.)

Q. 7. Were the notes which you have referred to as returned to the company all the notes that were held in Baltimore, or were they only your individual notes?

(Objected to.)

Ans. All the notes held in Baltimore.

Q. 8. Did you ever have any conversation with any member of the firm of Robert Garrett & Sons in relation to the bonds of the American File Company?

Ans. I did.

Q. 9. When and where did you have the first conversation that you can recollect?

Ans. It was somewhere about September 12th; whether the next day or the day following I cannot say.

Q. 10. Was this conversation before or after the failure of Messrs. Kirkland, Chase & Co.?

Ans. After.

26 Q. 11. Please state who introduced the conversation, and state all the conversation as far as you can remember. State how the conversation was introduced.

Ans. My conversation was with Mr. John W. Garrett, the senior of the house of Robert Garrett & Sons.

Q. 12. State the conversation or the substance of it.

Ans. The conversation was rendered necessary in regard to the substitution of these bonds for other collaterals which they held. I do not recollect the date. In my first conversation I told him I had substituted the bonds as collateral in place of a cargo of sugar which I had taken.

Q. 13. Was that all of the conversation?

Ans. I told him that I had substituted these bonds for the cargo of sugar which they held as collateral for a debt. I had previously placed the bonds in possession of my son, Mr. Garrett being absent from the city when the substitution was made. I had desired to make the explanation to him personally why I had not delivered the bonds to the firm. That is the reason; I gave them to my son, who took them home previous to the 12th September, to deliver to Mr. Garrett.

Q. 14. In answering the last question have you given the whole conversation or the substance of it?

Ans. It is the substance. I cannot recollect the conversation. It being a general one, it was extended.

Q. 15. Who was present at this conversation except yourself and Mr. John W. Garrett?

Ans. I do not recollect any one except Mr. John W. Garrett.

Q. 16. In answer to the previous question you stated that you told Mr. John W. Garrett that you had substituted these bonds for a certain cargo of sugar. Please state for what that cargo of sugar was pledged as security.

Ans. It was pledged as security for a loan of $50,000.

Q. 17. Have you ever had any further conversation with any member of the firm of Robert Garrett & Sons in regard to transferring any bonds of the American File Company?

Ans. I do not recollect any further conversation.

Q. 18. At the time of the conversation which you refer to were you aware, or had you reason to suppose, that the firm of Kirkland, Chase & Co., or you yourself, were insolvents, or unable to meet existing liabilities?

Ans. The conference was after our failure.

Q. 19. Had any member of the firm of Robert Garrett & Sons any reason to suppose you were insolvent at the time of the conversation?

27 Ans. They knew it.

Q. 20. Please give the exact date at which you became aware that the firm of which you were a member was insolvent and unable to meet its liabilities.

Ans. The exact date, to the best of my knowledge, that we would have to suspend was about 2 o'clock on the 11th day of September, 1872. At that time I became aware of it.

Q. 21. Did the knowledge or apprehension that you or your firm was insolvent and unable to meet its liabilities suggest the conference between yourself and Mr. Garrett?

(Objected to as incompetent and leading.)

Ans. I do not know that that knowledge suggested the conference. It grew out of the necessity of the case.

Q. 22. Were you present at an interview between Messrs. Robert Garrett & Sons and Mr. C. A. Nichols, president of the American File Company, when President Nichols asked for information about the amount which said Robert Garrett & Sons had loaned upon the bonds of the American File Company?

Ans. I was.

Q. 23. What answer was made to this at that interview, and by which of the firm of Robert Garrett & Sons was the answer made?

Ans. It was the junior partner of the firm, Mr. T. Harrison Garrett. The answer was made, $50,000.

Q. 24. Did Mr. Garrett, before answering the question, refer to any papers, books, or documents?

Ans. I think he did.

Cross-examination by Mr. COWEN:

Q. 1. What was the name of the vessel whose cargo of sugar you had pledged as security for the loan of $50,000?

Ans. The schooner Shiloh.

Q. 2. State when the loan of $50,000 was made for which that cargo of sugar had been pledged.

Ans. I cannot tell the date unless I see some documents to refresh my memory.

Q. 3. I hand you Exhibit R. G. No. 1, dated May 2d, 1872. Please examine the same; state in whose handwriting it is and by whom it is signed.

28 Ans. According to this paper, which is correct, this is written by Mr. Buck, our book-keeper, and signed by myself. The loan was made on May 2d, 1872.

Q. 4. State whether the notes therein mentioned as collaterals were subsequently withdrawn by you or your firm and anything substituted therefor.

Ans. These notes were withdrawn, and the cargo of the Shiloh substituted for these notes.

Q. 5. Examine Exhibit R. G. No. 2. State in whose handwriting it is, and by whom the same is signed.

Ans. It is in the handwriting of Mr. Buck, our book-keeper, and signed by myself.

Q. 6. In whose handwriting is the warehouse receipt thereto attached?

Ans. In the handwritting of John Myers.

Q. 7. In whose handwriting is the endorsement?

Ans. In the handwriting of Mr. Buck, and signed by myself.

Q. 8. You can state what was the occupation of Messrs. Garrett & Sons at the time of the loan of this $50,000, and for how long they had been filling this occupation?

Ans. They were merchants and bankers.

Q. 9. For what length of time had the firm been dealing with Garrett & Sons as bankers?

Ans. They had been dealing with Garrett & Sons for at least thirty years; previous to that with the father.

Q. 10. State whether, at the time of this loan of Robert Garrett & Sons to your firm (May 2d, 1872), the firm of Kirkland, Chase & Co. was indebted to Robert Garrett & Sons for other advances made by them to your house.

Ans. They were.

Q. 11. Can you state about the amount of these advances at that time?

Ans. For a long period of years. Seldom less than five hundred thousand dollars ($500,000).

Q. 12. May 2d, 1872, in addition to this loan of $50,000, your firm was indebted to Robert Garrett & Sons in the sum of at least four hundred and fifty thousand dollars ($450,000).

Ans. I think so; to the best of my memory.

29 Q. 13. Was not your arrangement with Robert Garrett & Sons that all collaterals pledged to them for loans to your firm should be held as security not only for the specific loan for which they were pledged but for the general balance due by your firm to them as bankers?

Ans. It was; that was our understanding.

Q. 14. Under the arrangement mentioned in answer to the above question, did not Robert Garrett & Sons hold the notes delivered as collateral under Exhibit R. G. No. 1, and the cargo of sugar delivered as collateral under Exhibit R. G. No. 2, not only as security for the specific loan, but as security for the general balance due them by your firm?

Ans. They did.

Q. 15. Did this arrangement which you have mentioned continue between your firm and Garrett & Sons up to the time of the failure of the firm?

Ans. It did.

Q. 16. You have stated in your direct examination that you had substituted the bonds of the American File Company in place of the cargo of sugar as collateral security. Please state when you made that substitution.

Ans. The substitution was made at the time the sugar was withdrawn. I do not know the date.

Q. 17. Please look at Exhibit R. G. No. 3. State in whose handwriting it is, and by whom the same is signed.

Ans. The handwriting is by Mr. Buck, and it is signed by myself. The date is May 30, 1872.

Q. 18. Was May 30, 1872, the date on which you substituted the bonds of the American File Company named in Exhibit R. G. No. 3 in lieu and in place of the cargo of sugar withdrawn?

Ans. It must have been. I do not recollect; can only judge by refreshing my mind by reference to this paper. I know it from this paper.

Q. 19. Were not these bonds substituted in place of the cargo of sugar as collateral security for the $50,000 loan above mentioned, and subject to the general arrangement by which all collaterals of your firm were held as security for the general balance due Robert Garrett & Sons as bankers?

Ans. They were.

Q. 20. Did you deliver these bonds, as you have stated in your direct examination, to your son to be held by him for Robert Garrett & Sons, and in substitution of the cargo of sugar withdrawn?

Ans. I did.

Q. 21. Did Mr. John W. Garrett, senior member of the firm of Garrett & Sons, assent to this arrangement of substitution when you informed him of that delivery to your son, at the time of the conversation after the failure, which you have spoken of in your examination-in-chief?

Ans. He did assent to it.

Q. 22. Did you in the conversation referred to inform Mr. Garrett or any member of the firm that you were a stockholder in the American File Company?

Ans. I do not recollect of doing so.

Q. 23. Did you ever, before that time, inform any member of the firm that you were a stockholder in the American File Company?

Ans. I do not recollect of having done so.

Q. 24. Have you stated that you explained to Mr. John W. Garrett at the time of your interview with him the reason for not informing him of the substitution of the bonds for the cargo earlier?

Ans. I have stated it.

Q. 25. Was the reason because you wished to explain to him personally, and he was absent from the city at the time of substitution?

Ans. That was my reason.

Q. 26. What was the indebtedness of the firm of Kirkland, Chase & Co. to Robert Garrett & Sons at the time of your suspension on Sept. 12, 1872?

Ans. It exceeded half a million of dollars.

Q. 27. Were the collaterals in their hands, including the bonds of the American File Co., sufficient to pay all their indebtedness?

Ans. They were not.

Q. 28. Can you state about what balance would remain after realizing upon all the collaterals that were in their hands?

Ans. I do not know the exact amount; it certainly would be over $100,000.

Q. 29. Did you not hold a larger proportion of the bonds of the file company than you held of its stock?

Ans. I did.

31 Q. 30. Had you purchased or obtained any of these bonds from other parties than the file company?

Ans. I did obtain some from other parties; they were sent to me to divide among the stockholders. The only stockholders who did or could take any were Mr. Woods and Mr. G. S. Brown. Woods took his and Mr. Brown instead of taking his sold them to me and threw in the stock. I kept the bonds and the stock.

Q. 31. Can you state what amount of stock was held in the city of Baltimore, outside of that held by yourself?

Ans. The first stock of the company was 200 shares, $1,000 each, $200,000. Baltimore held one-half of the original and subsequently was reduced to 92 shares, and Rhode Island 108 shares.

Q. 32. What number of shares of stock did you own?

Ans. I do not recollect.

Q. 33. Where are the certificates of stock, so that we may be able to ascertain the amount of shares owned by you?

Ans. They are with Messrs. Brooks and Barton, assignees.

Q. 34. Was not your firm adjudicated bankrupt on the 9th of October, 1872?

Ans. It was; about that date. I know it was in October, but do not recollect the date positively.

Examination-in-chief resumed by Mr. PAYNE:

Q. 25. In your cross-examination you have alluded to an agreement between the firm of Messrs. Kirkland, Chase & Co. and Messrs. Robert Garret & Sons, by which any collaterals held by them were to secure not only specific loans, but the general balance on account of loans to you. Please state when, where, and by whom this agreement was made; and if such agreement was in writing please produce the same and annex a copy of it to your deposition.

Ans. I do not recollect of any agreement in writing. I only know that it was our general understanding. I understood the agreement that was made was by myself on the part of Kirkland, Chase & Co., and by one of the members of the firm of Robert Garrett & Sons. As a general thing all arrangements of business passed between Mr. John W. Garrett and myself.

Q. 26. Will you swear that there was any particular conversation in which any specific agreement was made?

32 Ans. I am willing to swear to the best of my knowledge that such an agreement was made, as it was our understanding. There was no written agreement.

Q. 27. Please state when the paper marked "Exhibit R. G. 3," shown to you, was written.

Ans. I have no recollection of the paper being written. I only know it is there. It is the first I have seen of it; what was done with it I cannot say. I presume it was put with the bonds.

Q. 28. Did you say this is the first time you have ever seen that paper?

Ans. I have never seen it since I signed it.

Q. 29. Please state who was your book-keeper at the time of the failure and who made entries upon your books; and did you know of your

own knowledge whether or not, at the time this transfer is said to have been made, any records of such transfer was made upon the books of Kirkland, Chase & Co.?

Ans. W. H. Buck was our book-keeper and made entries upon our books. I do not know of my own knowledge whether any entry was made of the bonds or not.

Q. 30. At the time you say you made this substitution of the bonds referred to for the cargo of sugar referred to, please state whether or not any member of the firm of Robert Garrett & Sons was in the city of Baltimore.

Ans. I presume they were. I only knew that Mr. John W. Garrett was not in the city.

Q. 31. As a matter of fact, at that time did you not know that some member of the firm of Robert Garrett & Sons, or their representative, were in the city of Baltimore?

Ans. I did.

Cross-examination resumed by Mr. COWEN:

Q. 35. Were not most of your financial transactions made with Mr. John W. Garrett, the senior member of the firm?

Ans. They were.

Q. 36. Was not the reason for your awaiting his return before informing the members of the firm of the substitution above referred because you wished to see him personally upon the subject?

Ans. I wished to make an explanation to him personally for the simple reason that all my transactions were with him.

33 Direct examination resumed by Mr. PAYNE:

Q. 32. Please state low long Mr. John W. Garrett was absent in Europe at the time you refer to.

Ans. I do not think Mr. Garrett had gone to Europe at that time. He was not absent then.

Q. 33. How long was he absent?

Ans. I do not recollect. I know he was home comparatively a short time before the explanation was made.

Q. 34. During the absence of Mr. John W. Garrett did you not have any transactions with the firm of Robert Garrett & Sons? If so, with what member of that firm?

Ans. We had daily transactions—routine transactions every week. We purchased exchange.

Q. 35. Did you during Mr. John W. Garrett's absence borrow any money from Robert Garrett & Sons?

Ans. I think it more than probable I did.

Q. 36. Can you say whether you did or not?

Ans. I think it altogether probable I did.

Q. 37. Please state the time when you got the bonds of the American File Company to deliver to Messrs. Garrett?

Ans. They were delivered on the 11th of September, 1872, on the evening of that date.

Q. 38. Please state whether or not you agreed that you would guarantee that the Baltimore stockholders would take their proportion of the bonds of the American File Company, and that if they did not take them you would assume the liabilities of the Baltimore stockholders.

(Question objected to by Mr. Cowen as incompetent and irrelevant.)

Ans. I do not recollect of doing it in the form in which the question is given to me. I did say that I would see that the notes were carried and that the bonds were carried. My intention at the time, if not expressed, in my mind was that I would see the thing carried out. I do not recollect guaranteeing, or of saying the word "guaranteeing."

Q. 39. Look at the papers handed to you to refresh your memory; and state whether or not you then wish to modify your previous answer, to make any further statements; and, if so, please do so.

(Objected to by Mr. Cowen as incompetent and irrelevant.)

Ans. The papers are in my handwriting; it is my own act.
34 From them it appears that I did guarantee. Copies of which letters I desire to have attached to this as my answer.

Q. 40. Please state whether or not Robert Garrett & Sons knew of your withdrawing the Shiloh's cargo of sugar as security at the time it was withdrawn.

Ans. They did not.

Q. 41. Please state whether or not you took up the paper marked "Exhibit R. G. No. 2" when you withdrew the Shiloh's cargo and substituted or proposed to substitute the File Co.'s bonds therefor.

Ans. I could not take it up, for it was in possession of Robert Garrett & Sons.

Q. 42. The question is whether, when you withdrew the Shiloh's cargo, you took up the papers which you have in your hands?

Ans. I did not. It was in the hands of Robert Garrett & Sons.

Q. 43. Why did you not take it up?

Ans. Simply because I wanted to make the explanation to Mr. Garrett personally.

Q. 44. Please state what relation, if any, John Myers, the store-keeper, held to your firm before hiring the warehouse, and whether or not it was your custom, when warehouse receipts were endorsed to the order of Robert Garrett & Sons, to get their order before withdrawing the sugars from that warehouse of which Myers was the store-keeper.

Ans. He was the store-keeper of our bonded warehouses. We rented the warehouse; that is to say, Kirkland, Chase & Co. rented them. It was not our custom to give the orders to Robert Garrett & Sons before withdrawing the sugars from the warehouse.

Q. 45. Please state whether or not Mr. Myers performed any other duties for your firm than as store-keeper of the warehouse.

Ans. He did not.

Q. 46. Please state whether the books of Kirkland, Chase & Co., or your own private books, were so kept as to show any entry relating to the substitution of one collateral for another in changing securities.

Ans. I hardly know how to answer the question. My impression is that memorandums were kept, but in no regular books.

(Question and answer objected to.)

Q. 47. Please state, if you can do so without first examining your books, especially on this point, whether there is any entry or memorandums on your books showing the substitution of the file company's bonds for the cargo of sugar.

35 Ans. I do not know of any, of my own knowledge.

(Question objected to.)

Q. 48. Please state whether or not the bonds claimed to have been substituted by you for the cargo of sugar were your own property, or the property of Kirkland, Chase & Co.

Ans. The property of Kirkland, Chase & Co.

Q. 49. Please state how these bonds got to be the property of Kirkland, Chase & Co.

Ans. Simply because all the negotiations were done in their name here. I consider myself individually responsible for the negotiations made in the name of Kirkland, Chase & Co.

Q. 50. As a matter of fact, did not the stock of the American File Company stand in your own individual name, and were not the bonds your own individual property, but pledged by you for the benefit of Kirkland, Chase & Co., of which firm you were a member?

Ans. They were held by Kirkland, Chase & Co., and paid for by Kirkland, Chase & Co.

Mr. COWEN. That is, the bonds.

Ans. Yes, sir.

Q. 51. Please state whether or not the bonds were not issued to you as a holder of stock in the American File Co., or under your agreement of guarantee that the Baltimore stockholders should take their proportion, but that the notes you took up when receiving the bonds were bought by the funds of Kirkland, Chase & Co., of which firm you were a member.

(Objected to as incompetent, irrelevant, and leading.)

Ans. They were issued to me as a stockholder. They were paid for by the firm of Kirkland, Chase & Co.

Q. 52. Please state how much stock you took of George S. Brown, and when and how said stock was transferred or proposed to be transferred to you. Please look at the certificates of stock of the American File Company, numbers 120 and 63, which I hand to you before answering.

(Copies of these certificates are hereto attached by agreement of counsel, and marked "Exhibit R. G. No. 5," said agreement being marked "Exhibit C. S. No. 1.")

Ans. On reference to these papers, I find 130 shares of $100 each. I do not recollect the date. There is nothing here by which I can refresh my memory. They were transferred by power of attorney executed in blank on the back of certificates.

36 Q. 53. Please state how long after Mr. J. W. Garrett had returned to Baltimore it was before you went to him to explain about the substitution of the bonds for the sugar as collateral.

Ans. I don't recollect. Comparatively, but a few days.

Q. 54. Will you please produce and annex to your deposition a certified copy of the schedules in bankruptcy filed by Messrs. Kirkland, Chase & Co., so far as the same contain any reference to the claim of Garrett & Sons, and collaterals held by them?

(Question objected to as incompetent and irrelevant.)

Ans. I hand you what purports to be the document referred to.

(This paper is filed and marked "Exhibit A. F. No. 4.")

Cross-examination resumed by Mr. COWEN:

Q. 37. In question No. 38, in your redirect examination this morning, you were asked whether you did not agree that the Baltimore stockhold-

ers should take their proportion of the bonds of the American File Company, and if they failed to take them that you would take them or assume the liabilities of the stockholders; what did you mean by your answer to that question?

Ans. I meant that we would carry the arrangement out according to our understanding that the bonds should be taken in Baltimore.

Q. 38. From your letter to William F. Sayles, dated Baltimore, Feb. 24, 1870, I quote the following: "I will guarantee the bonds $44,500 shall all be taken here, and will return you notes for that amount; so this matter is fixed. All those who will not take their proportion I will keep. The thing must go through." Is that the arrangement to which you referred in your answer given to the above question?

Ans. It is.

Q. 39. Did you carry out that arrangement and take the bonds and return an equal number of outstanding notes of the American File Company to that company?

Ans. I took the bonds and returned an equal amount of notes.

Q. 40. Did you pay any cash from the funds of Kirkland, Chase & Co. to the holders of the promissory notes, other than those held by your firm, and lift those notes and return them to the company?

Ans. I did.

Q. 41. Did you also return the notes of the American File Company held by the firm of Kirkland, Chase & Co., and take in lieu thereof the bonds of the American File Company for an equal amount?

37 Ans. I did.

Q. 42. Were the warehouses of which you have spoken in your redirect examination regularly bonded warehouses?

Ans. They were.

Q. 43. Were the warehouses in which the cargo of the schooner Shiloh was stored bonded warehouses?

Ans. They were.

Q. 44. Did the firm of Kirkland, Chase & Co. issue warehouse receipts for property stored therein?

Ans. They did not.

Q. 45. Who issued the receipts for property stored therein?

Ans. John Myers, the store-keeper.

Q. 46. Were these warehouse receipts issued to you by John Myers, the store-keeper, or to your firm?

Ans. They were, whenever we asked for them.

Q. 47. When you withdrew the cargo of the Shiloh from the warehouse, can you tell to whom you sold it?

Ans. I cannot from recollection.

Q. 48. Please furnish us, from the books of your firm, the name of the party to whom the cargo was sold and the price paid therefor and date of sale. Have you the letters of William F. Sayles, to which your letters (copies of which you have attached to your deposition) are annexed? If so, please produce them.

Ans. It was sold to the Calvert Sugar Refinery for $66,293.76, on the 30th May, 1872. I herewith attach a copy of the "sale note" from the broker who made the sale (marked "Exhibit A. A. C. No. 4"). I also attach to this my answer copies of letters of Feb. 11, 1870 (marked "Ex-

hibit A. A. C. No. 1"); of Feb. 21, 1870 (marked "Exhibit A. A. C. No. 2), and a copy of letter of Nov. 9, 1870, omitting therefrom certain private and confidential matters not relating to the subject-matter of this examination (marked "Exhibit A. A. C. No. 3), all of these letters having been written to me by W. F. Sayles.

ALLEN A. CHAPMAN.

Attest:

CARROLL SPRIGG, *Examiner.*

88 *Deposition of D. C. Chapman.*

D. C. CHAPMAN, a witness produced on the part of the defendants, after having been duly sworn, deposed and said as follows:

Q. 1. Please state your name, age, residence, and occupation.

Ans. D. C. Chapman; age, 34; secretary Merchants' Exchange, and reside in Baltimore City.

Q. 2. Where did you reside in 1871 and 1872, and what was your occupation at that time?

Ans. In Baltimore; was cashier for the firm of Kirkland, Chase & Co.

Q. 3. Were you a member of that firm?

Ans. No, sir.

Q. 4. Did you, or not, ever have in your possession any bonds of the American File Company?

Ans. Yes, sir.

Q. 5. When did they first come into your possession? State particularly.

Ans. It would be impossible to say, sir, from memory. It was about the time Kirkland, Chase & Co. failed.

Q. 6. Was it before or after their failure?

Ans. I really cannot testify whether before or after.

Q. 7. Who, if any one, gave you the bonds?

Ans. My father, Allan A. Chapman.

Q. 8. When Mr. Allan A. Chapman delivered those bonds to you what was said? What did he say and what did you say?

Ans. I cannot remember. The statement was that they belonged to Garrett & Sons, and I was to keep them till I delivered them to them.

Q. 9. Please state what, to the best of your recollection and ability, was the time when those bonds were delivered to you, and what is your best recollection of it?

Ans. It would be a hard matter to recollect. I cannot tell you.

Q. 10. Give us your best recollection of when it was.

39 Ans. Yesterday I told Mr. Sayles that I thought they were delivered to me before the failure, but I do not remember making the remark spoken of as having been made a year or so ago. I understood that I had made the remark about a year ago that they were delivered to me after the failure. If I made the remark at that time it is more likely to be correct than my memory now.

(The latter part of this answer is objected to as incompetent.)

Q. 11. State your recollection now of what the time was.

Ans. I have dismissed the whole thing from my mind; I really cannot say whether I received them before or after the failure.

Q. 12. Can you recollect the date?

Ans. I cannot.

Q. 13. Can you state the month?

Ans. The 12th of September was the day of the failure; the only day I remember; it was about that time.

Q. 14. What did you do with the bonds?

Ans. I took them to my house, kept them, and delivered them to Mr. Garrett either next day or on the morning following—whether the next morning or the next I cannot tell; I do not know whether I kept them in my house one night, or two, three, four, or five nights.

Q. 15. To whom did you deliver the bonds?

Ans. Mr. John W. Garrett.

Q. 16. When the bonds were delivered by you to Mr. John W. Garrett what was said?

Ans. I do not remember anything being said except the ordinary "good morning." I told him there were the bonds that father had sent him, and bid him good morning and walked out.

Q. 17. When you received the bonds, while they were in your possession, or when you delivered them to Messrs. Garrett & Sons, were there any other papers with them?

Ans. Not that I know of; there may have been; they were in a box; I did not open them.

Cross-examined by Mr. COWEN:

Q. 1. Do you recollect of the bonds being counted out at one time and set aside by your father, he making the statement that they were Mr. Garrett's bonds?

40 Ans. I do not recollect of their being counted; I recollect father taking them out of the safe, and as he took them out he turned round to me and said, "These bonds are Mr. Garrett's," and put them back in the safe.

Q. 2. How long did this occur before the failure?

Ans. I cannot say.

Q. 3. But this was before the failure?

Ans. I think it was; almost sure it was.

Q. 4. Do you recollect the kind of box in which the bonds were at that time?

Ans. It was a green pasteboard box, as near as I can remember.

Q. 5. Were they in the same box at the time you took them to him?

Ans. They were in the green pasteboard box when I took them to him.

D. C. CHAPMAN.

Attest:

CARROLL SPRIGG, *Examiner.*

Deposition of Randolph Barton.

RANDOLPH BARTON, a witness produced on the part of the defendants after having been duly sworn, deposed and said, as follows:

Q. 1. Please state your name, age, residence, and occupation.

Ans. Randolph Barton; I am thirty-four years of age; my residence is Baltimore City; and occupation is an attorney at law.

Q. 2. Were you one of the assignees in bankruptcy of Kirkland, Chase & Co.?

Ans. I was.

Q. 3. As such assignee, did you make a settlement with Robert
41 Garrett & Sons with regard to certain collaterals held or claimed to be held by them given by Kirkland, Chase & Co., or Allan A. Chapman? If so, when was it made, was it in writing; and, if yea, will you produce a copy of the same and annex it to your deposition?

Ans. We made such an agreement and settlement. The date I do not remember. I file, however, this paper, which is a copy of the agreement, marked "Exhibit A F No. 1," dated May 18th, 1874. This agreement was finally ratified by the court.

Q. 4. Can you state the length of time during which the negotiations which resulted in this agreement were pending, approximately?

Ans. They began some time in the fall of 1872, and continued from that time until they were consummated on the 18th May, 1874.

Q. 5. Please explain why you made such an agreement, and particularly why you inserted therein, or caused to be inserted therein, the clause by which Messrs. Robert Garrett & Sons agreed to indemnify you as assignee against loss on account of the American File Company therein mentioned.

(Objected to by Mr. Cowen as incompetent and irrelevant.)

Ans. We had been informed that there was a question as to the liability of stockholders in that company, because of the failure to comply with some law of the State of Rhode Island requiring certain certificates or statements of the affairs of the company to be filed, and as the settlement with the sented Garrett was designed to be final and disembarrass the estate we repre- Messrs. from any connection with their claim, we inserted this clause of indem- to protect us as assignees, and as such as holders of that stock from being called on for contribution.

(Objected to by Mr. Cowen for same reason as the question.)

Q. 6. At this time, or during the negotiation between you and the Messrs. Garrett, was there any controversy between you as to the validity of the pledge of these bonds as collateral?

(Objected to by Mr. Cowen as irrelevant.)

Ans. The controversy between us involved the right of Messrs. Garrett to hold these collaterals and various others.

Q. 7. Will you please state what was the nature of the controversy in regard to these particular collaterals, and what was the claim of the assignee?

(Objected to by Mr. Cowen as incompetent, irrelevant, and hearsay.)

Ans. Mr. Chapman told me shortly after I became assignee, when in-
42 terrogating him as to the particulars of various matters upon the estate, that these bonds were held by the Messrs. Garrett, and had been delivered to them about the time of the failure of Kirkland, Chase & Co.; whether before or after the failure I am not sure; I think he said they were delivered after the failure. I asked him in pursuance of what agreement? He said that he had assigned them to the Messrs. Garrett. I asked him whether there was a written assignment or agreement respecting these bonds. He said there was not; that he had done it in his mind, or something to that effect. On such facts I did not consider the pledge as valid under the bankrupt law, and consequently included them in the list of collaterals, the right to hold which, on the part of Messrs. Garrett, we disputed.

(Answer objected to by Mr. Cowen as incompetent, irrelevant, and hearsay.)

Cross-examined by Mr. COWEN:

Q. 1. Who is your associate assignee?

Ans. Walter B. Brooks.

Q. 2. What is the date of your appointment as assignees?

Ans. The 25th of October, 1872.

Q. 3. Have you the certificates of stock of Allan A. Chapman in the American File Company?

Ans. We have.

Q. 4. How much stock did he own in that company?

Ans. I have got a list of them in my pocket. I got it from the office this morning.

Q. 5. Please attach the list to your deposition. ("Exhibit A. F. No. 2" is now filed, it being the list.) Will you be kind enough to examine again the list of these certificates of stock, and state what certificates stand in the name of Allan A. Chapman?

The agreement of the parties hereto attached, marked "Exhibit C. S. No. 1," waives the necessity of an answer to this question and is substituted for such answer.

Q. 6. What percentage does the estate of Kirkland, Chase & Co. pay the creditors?

Ans. I think we paid 19½ per cent.?

Q. 7. Will it pay any more than the 19½ per cent.?

Ans. I think it will pay one per cent more.

43 Q. 8. What percentage does the estate of Allan A. Chapman pay to creditors?

Ans. It pays its creditors in full.

Q. 9. What was the amount of property received by you as assignees of Allan A. Chapman?

Ans. $34,856.58.

Q. 10. Please state the amount of indebtedness of the estate of Allan A. Chapman?

Ans. The preferred claims and expenses were about $32,364.08. The general claims were $1,929.55.

Q. 11. What was the amount of the property received by you as assignees of Kirkland, Chase & Co.? And please state the amount of indebtedness of that firm.

Ans. The total amount of cash received by us, and collaterals adjusted by us, sums up $1,654,837.05. After the settlement with the Messrs. Garrett, the indebtedness, on which we made dividends, was as to the fifth dividend $2,341,804.95, and as to the sixth dividend, which was the last one, $2,369,321.12.

Q. 12. When you spoke of a controversy between you, as assignees, and Robert Garrett & Sons, you meant, did you not, a dispute between you as to the respective rights of the two parties?

A. Yes; I meant a dispute.

Q. 12. There was no litigation.

Ans. None. The litigation was averted, of course, by the settlement.

Q. 14. Garret & Sons, of course, denied your rights and insisted upon their own.

Ans. Yes.

Q. 15. Who held the largest preferred claim against the individual estate of Allan A. Chapman?

Ans. The United States.

Q. 16. Can you state the amount of that claim?

Ans. Yes. It was nearly $30,000.

Q. 17. What amount of property of the estate of Allan A. Chapman was left after the payment of the preferred claims and expenses?

Ans. About $2,500.

44 Q. 18. What amount of property was left after providing for all the claims which have been proved against the estate?

Ans. About $560, and an interest in some property in West Virginia, value unknown.

Q. 19. What would you estimate the value of that interest?

Ans. We were offered as much as $10,000 for it a long time ago, but individually I would now be glad to get $2,500 for it.

Q. 20. As I understand you, you have paid or provided for the creditors of this estate in full?

Ans. Yes.

Q. 21. What have you done with the $562.22 and the interest in the West Virginia lands which you have mentioned?

Ans. I find upon examining the books this morning that the account of that estate stands open with a balance to its credit. The title to the West Virginia lands is in us, Mr. Brooks and myself, as assignees under the original assignment from the register.

Q. 22. Will you please attach the schedule Exhibit R. B. No. 1, which you hold in your hands, as a succinct statement of the facts to which you have testified?

Ans. I will.

RANDOLPH BARTON.

Attest:

CARROLL SPRIGG, *Examiner.*

Deposition of Henry T. Meloney.

HENRY T. MELONEY, a witness produced on the part of the defendants, after having been duly sworn, deposed and said as follows:

Q. 1. Please state your name, age, residence, and occupation.

Ans. Henry T. Meloney; aged 36 years; residence, Baltimore; occupation, deputy clerk of the United States circuit and district courts.

45 Q. 2. As such clerk, have you in your custody the court papers in the matter of Kirkland, Chase & Co., bankrupts?

Ans. We have.

Q. 3. Will you please produce and annex to your deposition certified copies of all such parts of the schedules filed by Kirkland, Chase & Co. and by Allan A. Chapman which have reference to the claim of Robert Garrett & Sons against Kirkland, Chase & Co. of collaterals held by said Robert Garrett & Sons?

Ans. This Exhibit A. F. No. 4, attached to the deposition of Allan A. Chapman, is a true copy of Schedule A 2 as it purports to be filed by

Kirland, Chase & Co. in our court, and comprises all parts of such schedules, either of Kirkland, Chase & Co. and Allan A. Chapman, showing any indebtedness to Robert Garrett & Sons or securities held by Robert Garrett & Sons.

Cross-examined by Mr. COWEN:

Q. 1. Have you examined the schedules referred to in question 3 of your examination-in-chief and in your answer thereto?

Ans. I have.

Q. 2. State whether or not any of the schedules filed by Kirkland, Chase & Co., by Allen A. Chapman, or by any member of the firm, include the bonds of the American File Company as part of the estate of the firm or any member thereof.

Ans. They do not.

Q. 3. Who was the counsel of Messrs. Kirkland, Chase & Co. and of Allan A. Chapman in the bankruptcy proceedings, and in whose handwriting are the schedules filed by them?

Ans. Messrs. Marskell & Fisher and Barton & Wilmer appeared as counsel for the petitioning debtors, and the schedules appeared to be made in the handwriting of Randolph Barton.

Q. 4. Will you please produce and annex to your deposition certified copies of the discharge in bankruptcy of Allan A. Chapman and Robert R. Kirkland, in bankruptcy?

Ans. I produce and hand herewith certified certificate of the discharge of Allan A. Chapman and Robert R. Kirkland, and marked "Exhibit R. G. No. 6."

Q. 5. Will you please produce and annex to your deposition a
46 certified copy of the petition of the assignees in bankruptcy for the valuation of collateral securities and order of the court thereon?

Ans. I do herewith produce copy of the said petition and order of the court, marked "Exhibit R. G. No. 7."

Q. 6. Will you please produce and annex to your deposition a duly certified copy of the memorandum of the valuation of the collaterals held by Robert Garrett & Sons for their claim against Kirkland, Chase & Co.?

Ans. I do produce them, marked "Exhibit R. G. No. 8."

HENRY T. MELONEY.

Attest:

CARROLL SPRIGG, *Examiner.*

Exhibit R. G. No. 1.—Filed Dec. 19, 1878.

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

BALTIMORE, *May* 2, 1872.

Received of Messrs. R. Garrett & Sons fifty thousand dollars U. S. currency, as call loan, against which we have deposited with them the following notes as collateral security, viz:

E. Levering & Co.,	April	28,	4	mos.,	due	28–31	Aug..... $5,000
"	"	"	"	"	"	"	 5,000
"	April	30,	"	"		2	Sept..... 5,000

"	"	"	"	"	"	.....	5,000
"	"	"	"	"	"	.....	5,000
"	May	1,	"	"	1– 4	"	 5,000
"	"	"	"	"	"	.....	5,000
Maryland Sugar R'f. Co., April 23, 4 mos., due 23–6 Aug.....							6,000
"	"	"	"	"	"	"	6,000
Montell & Co., March 16, 4 mos., due 16–19 July.....							4,000

D. B'k, p. 417.

KIRKLAND, CHASE & CO.

[Five cent int. rev. stamp.]

47 *Exhibit R. G. No. 2.—Filed Dec.* 19, 1878.

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

BALTIMORE, May 28, 1872. Received from Messrs. R. Garrett & Sons the following notes, viz:

E. Levering & Co., April 28, 4 mos., due				28–31 Aug.....		$5,000
"	"	"	"	"	.....	5,000
"	April 30,	"	"	2 Sept.....		5,000
"	"	"	"	"	.....	5,000
"	"	"	"	"	.....	5,000
"	May 1,	"	"	1–4 Sept.....		5,000
"	"	"	"	"	.....	5,000
Maryland Sugar Ref. Co., April 23, 4 mos., due				23–26 Aug....		6,000
"	"	"	"	"	"	6,000
Montell & Co., March 16, 4 mos., due 16–19 July.....						4,000

which were deposited with them May 2, as collateral security for loan of fifty thousand dollars same date, and in lieu thereof we hereby pledge to them as collateral security for the said loan of $50,000 the cargo of sugar ex schr. Shiloh, from Cardenas, Cuba, stored in warehouse on Buchanan's wharf, weighing net 741,812, value 9 cents per lb., said cargo consisting of 470 hhds. and 176 boxes.

D. Bk., p. 500.

KIRKLAND, CHASE & Co.

[Five cents int. rev. stamp.]

BALTIMORE, May 28th, 1872. Received of Messrs. Kirkland, Chase & Co., on storage in warehouses No. 64 and 66, Buchanan's wharf, (470) four hundred and seventy hhds. and (176) one hundred and seventy-six boxes sugar, ex Shiloh.

JOHN MYERS, *Store-keeper.*

(Endorsed:) Deliver to Messrs R. Garrett & Sons, or order.

KIRKLAND, CHASE & Co.

48 *Exhibit R. G. No. 3.—Filed Dec. 19, 1878.*

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

BALTIMORE, *May* 30, 1872.

Messrs. ROBT. GARRETT & SONS:

GENTLEMEN: In lieu of cargo of sugar ex Shiloh (470 hhds. and 176 boxes), pledged to you as collateral security, 28th inst., for loan of fifty thousand dollars, we hereby substitute the following bonds of the American File Co., Pawtucket, R. I., viz.:

No.	31 to 40,	10 bonds of	$100 each	$1,000
	45 to 49,	5 "	100 "	500
	60 to 89,	30 "	500 "	15,000
	105 to 106,	2 "	500 "	1,000
	109 to 128,	20 "	500 "	10,000
	171 to 190,	20 "	1,000 "	20,000
	217 to 232,	16 "	1,000 "	16,000
	233 to 250,	18 "	1,000 "	18,000
				$81,500

KIRKLAND, CHASE & CO.

EXHIBIT R. G., No. 4.

Attached to and forming a part of the answer of Allan A. Chapman to the 39 interrogatory-in-chief, on page 22. Correct copy.

CARROLL SPRIGG, *Examiner.*

BALTIMORE, 12*th Nov.*, 1870.

WM. F. SAYLES, Esq., *Pawtucket, R. I.:*

DEAR SIR: I am this morning in receipt of your much esteemed favor of the 9th inst., for which I am much obliged. I have been expecting and waiting to receive just such a letter, and it is very satisfactory to know that an improvement is manifest in the working of the file company.

In regard to your agreement with Mr. Eichbaum, it is as you have stated it, and I stand ready to send you my share of the stock any moment as I understood it, one-half the amount, $5,000; is this your understanding? In the next place, I have been from the first in favor of issuing the $150,000 bonds, or sufficient to take up all the notes, and I will take our proportion and send you at once notes sufficient to cover the amount. I hope that you will carry this out; the sooner the better.

49 In reference to Mr. Norris, I of course know nothing of the agreement except through him. I must confess that I thought a commission in addition*al* to his salary very liberal pay. My idea is that the dispensing with his services, after agreeing for a year at $2,500, so suddenly, was hardly right, and I must say his asking pay to the 1st October, I did not think unreasonable. It may be that he has had from the company pay up to that time. There is, I think, no doubt of the truth of Mr. Norris's remark that his services were engaged one year too soon,

which was unfortunate for him, but was not so for the company, for I believe that he has done the company good. I have no feeling in the matter, and have no doubt of the company acting as they believed right and with a desire to do justice. I will simply remark that you are not alone in your estimate of Mr. N.'s qualities. I am sorry to hear that you are not well. I was in hopes that your summer recreation would have entirely restored your health. I am in hopes of seeing you in all this month.

Yours, truly,

A. A. CHAPMAN.

BALTIMORE, 24*th Feb.*, 1880.

WM. F. SAYLES, Esq., *Pawtucket, R. I.:*

DEAR SIR: Your esteemed favor of the 11 and 21 inst. duly at hand. I meant to have written before, but have been out to Cincinnati, gone a week, and also very busy, and have not had time to see the parties; however, it is not necessary to see them. I will guarantee the bonds, $44,500, shall all be taken here, and will return you notes for that amount, so this matter is fixed. All those that will not take their proportion I will keep; the thing must go through. I hope that all your people will, without hesitation take them up. I am glad to hear that the Nicholson makes so good a showing; it is a guarantee that we can do better. Mr. Norris is off out West. I feel confident as to his ability to sell the files, so go ahead.

I saying to you that I will take all the bonds at once, it is, of course, understood that I put myself in your hands to be protected in every way; and, of course, it is with the proviso that you see that the quota is taken by the R. I. stockholders.

Yours, truly,

A. A. CHAPMAN.

I expected to have had copies of the accounts, or rather a statement to show to our people here.

50 EXHIBIT R. G., No. 5.

Correct copy of certificate of stock and power of attorney.

CARROLL SPRIGG, *Examiner.*

Incorporated May, 1863.

THE AMERICAN FILE COMPANY, PAWTUCKET, R. I.

No. 120.] Shares, $100 each. [Sixty shares.

This is to certify that George S. Brown entitled to sixty shares of the capital stock of the American File Company, transferrable on the books of the company, at their office in Pawtucket, in person or by attorney, on the surrender of this certificate.

Witness the seal of the company, and the signature of the president and treasurer, this fourteenth day of October, 1868.

[SEAL OF CO.] STEPHEN A. JENKS, *Pres't.*

NAHUM BATES, *Treas.*

Power of attorney.

I hereby authorize and empower , to transfer shares of the capital stock of the American File Company, now standing in name on the books thereof.

Witness my hand and seal at , this day of 186 .

GEORGE S. BROWN. [SEAL.]

Witness:

W. G. BOWDOIN.

Name of person to whom issued.	No. of cer.	No. of shs.	Par value.
George S. Brown	63	70	$100
Allen A. Chapman	54	7	1,000
Allen A. Chapman	24	8	1,000
Allen A. Chapman	40	5	1,000
Allen A. Chapman	127	245	100
Allen A. Chapman	105	20	100

51 EXHIBIT A. F., No. 4.—*Filed Dec.* 20, 1878.

SCHEDULE A—2—(as approved).

In the matter of Kirkland, Chase & Co., bankrupt.

Creditors holding securities.

Names of creditors.	Residence and occupation.	When and where contracted.	Value of securities. Dollars.	Cts.	Particulars.
R. Garrett & Sons.	Baltimore; bankers.	1872; Baltimore.	Unknown.		R. Garrett & Sons hold the following securities; the value thereof it is impossible at this time to determine:
					Notes, Lazear Bros $57,000 00
					Do. J. C. Bridges & Co 65,000 00
					Do. W. D. Shurtz & Co 58,989 24
					Do. A. A. Perry & Co 19,200 00
					Do. L. C. Painter 7,050 00
					Do. Montell & Co 4,000 00
					Do. A. Lewis & Co 3,865 01
					Do. Charles W. Beatly 2,430 23
					Do. John Leary 2,430 25
					Do. John Torny & Co 793 02
					Do. H. S. Wilson 700 00
					Do. Henry Rosendale 673 50
					Do. T. S. Showacre & Co 662 18
					Cargo sugar, Chattanooga 23,858 69
					Do. do. Georgia 51,078 46
					Do. do. Gladiator 24,939 09
					Do. do. Geo. Latimer (part) 11,601 89
					Do. do. C. E. Monisar (part) 20,758 64
					Do. do. Senorita (part) 15,101 83
					34 shares Md. sugar R. stock 34,000 00
					50 shares Merchants B. of Petersburg .. 5,000 00
					2,940 shares Phœnix Marine Co 44,160 00
					1,201 bags coffee 31,605 03

ALLEN A. CHAPMAN,
ROBT. R. KIRKLAND,
Petitioners.

I do certify that the aforegoing is a true copy from the original schedules in the matter of Kirkland, Chase & Co., bankrupts, so far as said schedules show R. Garrett & Sons creditors of said bankrupts, and comprise all of such schedules showing the same.

In testimony whereof I hereunto set my hand and affix the seal of the district court this 19th Dec., 1878.

JAS. W. CHEW, *Clerk.*

CARROLL SPRIGG, *Examiner.*

52 EXHIBIT A. A. C., No. 1.

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

[American File Company. Henry Eichbaum, agent.]

PAWTUCKET, R. I., *Feb.* 11*th*, 1870.

ALLAN A. CHAPMAN, Esq.:

DEAR SIR: I have just written our mutual friend, Mr. Norris, that he can't be too expeditious in forwarding orders. We are under full headway, and the few orders on hand won't last a week.

Our machines are behaving splendidly, and Mr. Eichbaum is now convinced that files cannot be produced equal to ours with any device now in use. I have said in my letter to Mr. Norris that I had been looking every day for a large order for the Baltimore & Ohio road; can't you help him to get one? How about the bonds? Nearly all of our folks have subscribed, except Messrs. Mason & Slater, and I think they will do so in a day or two. If you take your quota in Baltimore, I have no doubt ours will be taken. Let me hear from you on the subject, and oblige,

Yours, truly,

W. F. SAYLES.

Since writing this note my brother has just come from Providence; said he met Col. Nichols, Gov. Smith's son-in-law, who told him he heard the Nicholson Co. made a very handsome showing in the way of profit for last year's business. Their annual meeting occurred last week. The report is they made 80,000 dollars.

EXHIBIT A. A. C., No. 2.

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

PAWTUCKET, *Feb.* 21, 1870.

FRIEND CHAPMAN: I have been expecting to hear from you that the bonds apportioned to the Baltimore stockholders had been taken. I think if your folks do this the Rhode Island folks will take theirs. Unless we carry out this plan I don't know what will become of us; there is no time to be lost.

I find it too hard work to carry the money matters as matters are now situated, and I must have relief; and I know of no way of bringing it

about but by the plan which it is proposed to carry out, and I am
53 exceedingly anxious to have it completed; and when I hear you have arranged for your proportion (I mean of course the distribution belonging to the Baltimore stockholders) I have no doubt our folks will take theirs.

The prospect of our business proving a success brightens every day. The machine never turned out as good a file, probably, as now, and everything seems to be working favorably for us. With our finances placed in a proper condition, and plenty of orders for files (as Mr. Norris promises), we shall come out all right after all.

Yours, truly,

W. F. SAYLES.

EXHIBIT A. A. C., No. 3.

Correct copy of original paper.

CARROLL SPRIGG, *Examiner.*

PAWTUCKET, *Nov.* 9, 1870.

ALLAN A. CHAPMAN, Esq., *Baltimore:*

DEAR SIR: I have been thinking of writing to you for some time in relation to quite a number of important matters connected with our file business, but have shrunk from doing so for the reason that I have found out that I need rest, and a duty I owe to my family as well as myself seems to make the demand imperative that I should avoid every kind of work not absolutely of a pressing nature. For this reason I have thrown the responsibility of the file business upon others, with Col. Nichols at the head.

You will remember that I thought that the success of our business would be greatly promoted by placing $10,000 worth of the stock of our company, at par value, in the hands of a trustee as an incentive to greater faithfulness in our agent, with the understanding with him that if at any time during three years he make the business pay a profit from which a dividend of six per cent. on the capital stock could be declared (the stock stood at the time at 200,000 dollars), it should belong to him. You very kindly offered to join me in this plan, and I made such an agreement with Mr. Eichbaum. The business has been gradually improving since he has been with us, and if we do as well for the remainder of three years as during the past six months, he will be entitled to the stock. Ought we not to carry out our contract with him? Next, in regard to the settlement for the bonds; I had your account made up the same as my own and the other stockholders', thinking it was the equitable way, in which Gov. Smith acquiesced.

* * * * * * *

It was a very lucky hit in sending Mr. Paine out; he has as far
54 exceeded our expectation in the sale of files as Mr. N. disappointed us, and now, I think, is a good time for us to move in some plan to retire more of our notes and give us suitable capital to work with, while our folks are feeling encouraged as it regards the future success of our business, and to this end I called our directors together and stated how much we were constantly embarrassed for funds to carry on the business, all the

money paid in having been used to cancel notes; that for the last few months we had been doing exceedingly well, although our sales have been at the rate of less than 80,000 per year; that I believed with three more men in the field like "Paine" we could bring our sales to a point which would make our business very profitable. To do this we must place our finances in the proper shape, and to do so it was proposed to issue 25,000 more bonds, making in all 150,000; you remember we voted to issue 125,000, 25,000 of which was to be held by the company, to be disposed of at the discretion of the board; these have never been used. Now I propose to issue in addition 25,000 more, giving us 50,000 to be secured the same as the others, and to be taken by the stockholders as before, pro rata. Our folks here will take theirs, I think, from what I know of their feelings. They can be paid for, as before, by the notes or other obligations of the company. They are to have coupons attached, bearing interest the same as the others. This plan will reduce our indebtedness to a point which will enable our treasurer to get along quite comfortably; as it is, I am constantly being called upon to loan the company money, and I want relief, and must have it some way, and this appears to me as good a one as any. It is certainly the best for you and I, as the bonds freeze out the stock; in other words, those holding stock who have not taken the bonds will gladly throw it up, for the payment of the bonds is too far in the future to give the stock any value. After paying ten per cent. on the bonds if anything is left we shall want it as a surplus to do the business with. I have written you a long and hasty letter, but did not see how to avoid it. Please let me know if you will take, as before, your proportion of the bonds, which will be not far from 20,000 dollars, and send us notes, as before, in settlement. Please write me at once your conclusion in the matter, as our folks seem to be now in the proper humor to carry out the plan proposed, and a few days may change their views. It is far better for us to hold the bonds than the notes. As nearly as we can calculate our profits are at the rate of 15,000 per year on the little we are doing.

Yours, truly,

W. F. SAYLES.

55 EXHIBIT A. A. C., No. 4.—*Carroll Sprigg, examiner.*

BALTIMORE, *May 30th*, 1872.

Sold, for account Messrs. Kirkland, Chase & Co., to Calvert Sugar Refining Co.:

R. 66		
T. 128		
B. 70		
F. 86		
D. 100	470 hhds. and 176 boxes	Cuba sugar, ex Shiloh, at $8\frac{7}{8}$ cents, 4 months.
C. 20		
470 hhds.		
A. 176 boxes.		

S. P. THOMPSON & CO.,
Per WM. S. OSBURN.

Amount of bill rendered, $66,293.76.

56 EXHIBIT A. F., No. 1.—*Filed Dec.* 19, 1878.—*Carroll Sprigg, examiner.*

It is hereby agreed between the subscribers (subject to the sanction and approval of said court, sitting in bankruptcy) that all controversies between them respectively, growing out of the matter of Kirkland, Chase & Company, bankrupts, shall be settled as follows:

First. The undersigned, assignees of Kirkland, Chase & Company, do and will assign and relinquish to Robert Garrett & Sons all claim to collaterals of every nature, or the proceeds thereof, held by said Robert Garrett & Sons, for the debt of said Kirkland, Chase & Company to said Robert Garrett & Sons.

Second. Upon the approval of this agreement by said court said assignees agree to pay Messrs. Robert Garrett & Sons the sum of five thousand dollars.

Third. Upon the approval of this agreement by said court said assignees agree to pay the Central National Bank of Baltimore the sum of six thousand dollars, with interest at the rate of three per cent., which is to be in full satisfaction of the claim of said bank against said firm of Kirkland, Chase & Company.

Fourth. Said assignees are to do all in their power to facilitate Messrs. Robert Garrett & Sons in the recovery of all moneys and property now held adversely to the claim of Messrs. Robert Garrett & Sons by the assignees of the firms of Lazrar Brothers and J. C. Bridges and Company, with which the firm of Kirkland, Chase & Company had any connection, the assignees of Kirkland, Chase & Company hereby relinquishing and assigning all claim thereto to Messrs. Robert Garrett & Sons.

Fifth. Said assignees are to confirm and complete, so far as they may be able, the title of Messrs. Robert Garrett & Sons to all collaterals and property so as aforesaid held by them, and by this agreement relinquish and assign to said Robert Garrett & Sons the same.

57 Sixth. In consideration of the foregoing acts on the part of said assignees, said Robert Garrett & Sons hereby release and abandon all rights and claims to dividends already declared and hereafter to be declared in the estate of Kirkland, Chase & Company by said assignees or their successors; and said Robert Garrett & Sons likewise further agree, that whereas said assignees have been offered the sum of fifty cents in the dollar for certain bonds of the American File Company (now held by Messrs. Robert Garrett & Sons, which were received as collaterals from Messrs. Kirkland, Chase & Company), and an indemnification against loss or damage of any kind as holders of certain stock of said American File Company as assignees of A. A. Chapman and Kirkland, Chase, & Company, said Robert Garrett & Sons hereby agree to indemnify the said assignees against loss or damage of any kind as holders of the stock aforesaid; and in consideration of said acts of said assignees, said Robert Garrett & Sons do also hereby agree to indemnify the said assignees and said estate of Kirkland, Chase & Company, and the estate of A. A. Chapman against loss or damage of any kind for releasing their claim to the said bonds of the American File Company, now held by Messrs. Robert Gar-

rett & Sons, and agree to hold said assignees and said estate harmless for said transfer and release.

Witness our hands set hereto this 18th day of May, 1874.

(Signed) WALTER B. BROOKS,
(Signed) RANDOLPH BARTON,
Assignees in Bankruptcy of Kirkland, Chase & Co., and A. & A. Chapman.
(Signed) BROWN & BURNS,
For Assignees.
(Signed) C. J. M. GWINN,
For R. Garrett & Sons.
(Signed) R. GARRETT & SONS.

I, James W. Chew, clerk of the district court of the United States in and for the district of Maryland, do hereby certify that the annexed and aforegoing is a true copy from the original now on file in the said district court, in the matter of Kirkland, Chase & Co., bankrupts, in bankruptcy.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said district court this 22d day of June, A. D. 1876.

[L. S.] JAMES W. CHEW,
Clerk of the District Court for said District.

58 EXHIBIT A. F., No. 2.—*Filed Dec.* 19, 1878.—*Carroll Sprigg, examiner.*

	Dates of certificates.
7 shares at $1,000	January 14, 1864.
8 shares at $1,000	June 29, 1863.
5 shares at $1,000	January 9, 1864.
60 shares at $100	October 14, 1868.
245 shares at $100	October 14, 1868.
70 shares at $100	August 18, 1864.
20 shares at $100	March 18, 1867.

EXHIBIT C. S., No. 1.—*Carroll Sprigg, examiner.*

It is agreed that a copy of the certificate of stock of the American File Company, No. 120, made by the commissioner, shall be attached to the deposition of Randolph Barton, and that there shall be made by the commissioner in place of copies of the other certificates, which are in the same form, a list indicating the number of certificate, the number of shares, the par value of each share, and person to whom issued. The commissioner shall also make a copy of the blank power of attorney, signed by George S. Brown, as found on certificates numbers 120 and 63.

It is further agreed that copies of the original Exhibits R. G., Nos. 1, 2, and 3, shall be attached to the deposition of Allan A. Chapman in lieu of the original, and that the originals shall be produced by the counsel for Messrs. Robert Garrett & Sons, at the hearing of the cause; all copies of exhibits are to be certified as correct by the commissioner.

ARTHUR D. PAYNE,
For American File Co. et al.
JOHN K. COWEN AND
E. J. W. CROSS,
For Robert Garrett & Sons.

59 EXHIBIT R. B., NO. 1.—*Filed Dec. 20, 1878—Carroll Sprigg, examiner.*

Entire estate of Allan A. Chapman, collected		$34,856 58
Paid preferred claim and expenses		32,364 81
		$2,491 77
Paid general creditors	$1,396 05	
Claims presented, not paid	533 50	
		$1,929 55
To be turned over to estate of Kirkland, Chase & Co. say and interest of A. A. Chapman in certain property in West Virginia, value unknown.		$562 22
Total estate of firm of Kirkland, Chase & Co., administered, including collaterals and cash		$1,654,837 05
Claims of unsecured creditors as per basis of 5th dividend		$2,341,804 95
Claims of unsecured creditors as per basis of 6th dividend		2,369,321 12

Total dividend declared 19 ½ per cent.
Estimated future dividend 1 per cent.

60 *Certificate of final discharge of bankrupt.*

In the district court of the United States for the district of Maryland, in bankruptcy.

IN THE MATTER OF
ALLAN A. CHAPMAN, ROBERT R. KIRKLAND, and ALEXANDER KIRKLAND, bankrupts.

DISTRICT OF MARYLAND, *ss:*

Whereas, Allan A. Chapman, of Baltimore City, in the county of , State of Maryland, has been by this court duly adjudged a bankrupt, under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and appears to have conformed to all the requirements of the law in that behalf: it is therefore ordered by the court that said Allan A. Chapman be, and he hereby is, forever discharged of and from all debts and claims which by said acts are made provable against his estate, and which existed on the 7th day of October, A. D. 1872, on which day the petition for adjudication was filed by him and Robert R. and Alexander Kirkland, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of said district court, at Baltimore, in said district, this the 28th day of December, A. D. one thousand eight hundred and seventy-four.

[L. S.] WILLIAM F. GILES,
Judge of the District Court U. S. for the District of Maryland.

I, James W. Chew, clerk of the district court of the United States in

and for the district of Maryland, do hereby certify that the annexed and aforegoing is a true copy from the original now on file in the said district court, in the matter of Kirkland, Chase & Co., bankrupts, in bankruptcy.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said district court this 27th day of December, A. D. 1878.

[L. S.] JAS. W. CHEW,
Clerk of the District Court for said District.

61 EXHIBIT R. G. No. 6.—CARROLL SPRIGG, *examiner.*

Certificate of final discharge of bankrupt.

In the district court of the United States for the district of Maryland.
In bankruptcy.

IN THE MATTER OF
ALLEN A. CHAPMAN, ROBERT R. KIRKLAND, and Alexander Kirkland, bankrupts.

DISTRICT OF MARYLAND, *ss:*

Whereas Robert R. Kirkland, of Baltimore City, in the county of , State of Maryland, has been by this court duly adjudged a bankrupt, under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and appears to have conformed to all the requirements of the law in that behalf it is therefore ordered by the court that said Robert R. Kirkland be, and he hereby is, forever discharged of and from all debts and claims which by said act are made provable against his estate, and which existed on the 7th day of October, A. D. 1872, on which day the petition adjudication was filed by him and Allen A. Chapman, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand, and the seal of said district court, at Baltimore, in said district, this the seventh day of February, A. D. one thousand eight hundred and seventy-four.

[L. S.] WILLIAM F. GILES,
Judge of the District Court U. S. for the District of Maryland.

I, James W. Chew, clerk of the district court of the United States in and for the district of Maryland, do hereby certify that the annexed and aforegoing is a true copy from the original now on file in the said district court, in the matter of Kirkland, Chace & Co., bankrupts, in bankruptcy.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court this 27th day of December, A. D. 1878.

[L. S.] JAS. W. CHEW,
Clerk of the District Court for said District.

62 EXHIBIT R. G. No. 7.—CARROLL SPRIGG, *examiner*.

District court of the United States, district of Maryland.

IN THE MATTER OF KIRKLAND, CHASE & Co., bankrupts. } In bankruptcy.

To the honorable William Fell Giles, judge:

The petition of Walter B. Brooks and Randolph Barton, assignees in bankruptcy of the firm of Kirkland, Chase & Co., respectfully represent unto your honor, that among the assets of said firm reported in their schedule and inventory filed with the petition is a large amount of valuable property, represented by said firm as hypothecated with various creditors, and consisting of merchandise, stocks, choses in action, &c.

Your petitioners represent that upon them devolves the duty of *of* investigating the validity of the pledge of said property, and the reduction of the same to money, or to a valuation to be agreed on with such creditors as they shall find hold the same by a legal title against the general and unsecured creditors of said firm.

Your petitioners represent that they are pursuing said investigation now, and, with a view to the preparation of every claim for a dividend, are desirous of reducing all of said collaterals either to money or to a valuation at which such creditors as they may find legally entitled to hold the same will with your petitioners, agree to take said property.

Before proceeding, however, so to settle and determine said matters, they deem it best to procure from this honorable court its sanction and authority for their said proceedings.

They therefore pray the order of this honorable court allowing them, as in their judgment may appear best for the interests of said estate, to settle and determine the value of all collaterals held by such creditors of said firm as may be legally entitled to hold the same, by agreeing with such creditors upon the proper disposition and value thereof, believing such an order will facilitate greatly their settlement of said estate.

And as in duty, &c.

W. B. BROOKS,
RANDOLPH BARTON,
Assignees of Kirkland, Chase & Co.

63 DISTRICT OF MARYLAND, *to wit:*

Personally appeared before me, this 14th day of April, 1873, Randolph Barton, one of the above-named assignees, and made oath in due form of law that the matters set forth in the foregoing petition are true to the best of his knowledge and belief.

R. STOCKETT MATHEWS,
Register in Bankruptcy.

I consider the power with which the assignees are already clothed by the express provisions of the bankrupt law are sufficiently ample to enable them to do all that an order in the absence of such provisions could authorize, but I do not think the order asked for can do any harm, and

therefore I approve of the passage of an order in accordance with the above petition.

R. STOCKETT MATHEWS.

Ordered by the court this 16th day of April, 1873, upon the foregoing petition, affidavit, and recommendation of register, that said assignees have leave to settle upon the proper disposition and value of all collaterals which they believe upon investigation to be held legally by the creditors of said bankrupts; all such disposition and valuation to be duly entered into the accounts of said assignees, to be filed with the register having charge of this case, and with this court.

WILLIAM F. GILES, *Judge.*

I, James W. Chew, clerk of the district court of the United States in and for the district of Maryland, do hereby certify that the annexed and aforegoing is a true copy from the original now on file in the said district court, in the matter of Kirkland, Chase & Co., bankrupts, in bankruptcy.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said district court this twenty-seventh day of December, A. D. 1878.

[L. S.]

J. W. CHEW,
Clerk of the District Court of said District.

64 EXHIBIT R. G., No. 8.—CARROLL SPRIGGS, *Examiner.*

BANKRUPT ESTATE OF KIRKLAND, CHASE & CO. } In the matter of the claim of Robert Garrett & Sons.

It is agreed that the collaterals of the following nature held by Robt. Garrett & Sons, for their claim against Kirkland, Chase & Co., shall be valued as follows, and with the following qualifications:

Notes of A. Criss & Son, at (50c.) fifty cents in the dollar, balance due	$3,000 00
Notes of J. C. Bridges & Co., at (28c.) twenty-eight cents in the dollar	65,000 00
Notes of Lazear Bros., at (30c.) thirty cents in the dollar	57,000 00
Notes of A. A. Perry & Co., at (15c.) fifteen cents in the dollar	19,200 00
Notes of L. C. Painter & Co., endorsed by A. A. Perry & Co., at (75c.) seventy-five cents in the dollar	7,050 00
Notes of C. W. Beatty, endorsed by A. A. Perry & Co., at (15c.) fifteen cents in the dollar	2,430 23
Notes of John Leary & Co., endorsed by A. A. Perry & Co., at (15c.) fifteen cents in the dollar	2,430 25
Notes of John Young & Co., endorsed by A. A. Perry & Co., at (35c.) thirty-five cents in the dollar	793 02
Notes of J. S. Showacre & Co., endorsed by A. A. Perry & Co., at (10c.) ten cents in the dollar	662 18
Notes of Henry Rosendale, endorsed by A. A. Perry & Co...	673 50

(And 15 per cent. additional in view of benefits expected from A. A. Perry & Co. estate, on all the notes endorsed by A. A. Perry & Co.)

Merchants' National Bank of Petersburg, Va., stock at (65c.) sixty-five cents in the dollar, 50 shares at $100, par..... 5,000 00

Maryland Sugar Refining Co.'s stock, at (50c.) fifty cents in the dollar, 34 shares at $1,000, par..... 34,000 00

Phœnix Manf'g Co.'s stock, at ($10) ten dollars per share, 2,944 shares at $15, par..... 44,160 00

American File Company's bonds, (25c.) twenty-five cents in the dollar..... 81,500 00

65 124 bags coffee ex. G. W. Whitford. Proceeds in hands of Lazear Brothers, assignees ($3,299.23), thirty-two hundred and ninety-nine $\frac{23}{100}$ dollars, at that am't.

Notes of W. D. Shurtz & Co., at (47c.) forty-seven cents in the dollar..... 58,989 25

Value of balance of note of A. Criss & Son to be increased or decreased as may be determined in collection.

Value of of notes of J. C. Bridges & Co. and Lazear Brothers to be increased should the estates of said firms pay more.

Value of A. A. Perry & Co.'s notes to be increased or decreased as may be determined in collection.

Value of L. C. Painters & Co.'s,
C. W. Beatty's,
John Leary & Co.'s,
John Young & Co.'s,
J. T. Showacre & Co.'s,
Henry Rosendale's,
} Notes, to be increased or decreased as may be determined in collection.

In addition, said last-mentioned six claims are to be valued at 15 cents more on account of their being endorsed by A. A. Perry & Co., this to be increased or decreased as collections may be made.

Stocks and bonds to be credited now at the valuation above. Their final value to be determined by sale, both Messrs. Robert Garrett & Sons and assignees assenting, or by agreement between the parties.

One hundred and twenty-four bags of coffee ex. Whitford, to be credited at $3,299.23, without prejudice to any rights of Robt. Garrett & Sons to prove hereafter for this amount in the event of their not realizing it or any portion of it from assignees of Lazear Bros.

Notes of W. D. Shurtz & Co., to be credited at 47 cents in the dollar, to be reduced to bring them down to lowest value than any other creditor shall be allowed to put them at.

W. B. BROOKS, AND
RANDOLPH BARTON,
Assignees of Kirkland, Chase & Co.

The above agreement is thus endorsed, to-wit: "Mr. Mathews, register, please file this paper with proof of Messrs. Robert Garrett & Sons, and as proof thereof. W. B. Brooks, Randolph Barton, assignees of Kirkland, Chase & Co."

Also endorsed: "Filed June 23, 1873. R. S. Mathews, register."

66 I, James W. Chew, clerk of the district court of the United States in and for the district of Maryland do hereby certify that the annexed and aforegoing is a true copy from the original now on file in the said district court, in the matter of Kirkland, Chase & Co., bankrupt, in bankruptcy.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said district court, this 27th day of December, A. D. 1878.

[L. S.] JAMES W. CHEW,
Clerk of the District Court for said District.

Deposition of William F. Sayles.

Question by A. D. PAYNE, Esq., for defendants:

Q. 1. What is your name, age, residence, and occupation?

Ans. William F. Sayles; age, 54; Pawtucket; occupation, bleacher.

Q. 2. Have you at any time become a member of the American File Company; if yea, when did you become, and how long did you remain a member of it, and what official position, if any, did you occupy in it?

Ans. Yes; I became a member June 17, 1863, upon the acceptance of the charter granted by our Rhode Island legislature in that year. I continued to be a member to the present time. I have been a director from the organization of the company to the present time.

Q. 3. When was the American File Company incorporated, and when was the company organized under the charter?

Ans. It was incorporated at the May session, 1863, of our Rhode Island legislature. The charter was accepted and the company organized under that charter June 17, 1863.

Q. Were there any members of the American File Company other than citizens of Rhode Island? If yea, state how many, their names, as far as you can recall them, and under what circumstances they be-
67 came members of the corporation, and what proportion of its capital stock they held.

(Objected to by complainants' counsel, Garrett & Sons, as irrelevant, incompetent and immaterial.)

Ans. There were twenty-seven stockholders in all; sixteen of these were from Baltimore and its vicinity, in the State of Maryland, and eleven from Pawtucket and Providence, Rhode Island. The names of the stockholders from Baltimore and its vicinity are as follows: Allan A. Chapman, twenty-three shares; George S. Norris, ten shares; Henry May, seven shares; George S. Brown, seven shares; Richard J. Worthington, seven shares; Richard Norris, jr., seven shares; Henry A. Thompson, five shares; Lewis Audoun, seven shares; Hiram Woods, jr., three shares; Richard H. Mitchell, five shares; Henry A. Wilson two shares; Wm L. Montague, jr., two shares; R. H. Love, one share; Wm. H. Perkins, one share; making ninety-six shares out of one hundred and fifty, fifty-four being held in Rhode Island by eleven stockholders. The circumstances under which the Baltimoreans became interested are fully explained by an agreement, a copy of which is appended to my deposition, marked "W. F. S., A, H. Pitman, examiner," and made a part of my answer to this interrogatory. The original capital stock was one hundred and fifty thousand dollars.

Q. 5. Were there any directors in the American File Company other than citizens of Rhode Island; and, if yea, how many? Please state their names as far as you can remember.

(Objected to by complainants' counsel as irrelevant, incompetent, and immaterial.)

Ans. The board of directors consisted of eight persons at its organization, four of whom were from Baltimore, and their names are as follows: Allan A. Chapman, Henry A. Thompson, Lewis Audoun, G. S. Norris. Mr. Chapman continued to be a director till his failure on Oct. 8, 1872. Lewis Audoun, one of the Baltimore directors, and formerly a member of the American File Company of Baltimore, was elected treasurer, and came to Rhode Island to live, and continued the treasurer until his failing health compelled him to resign. Henry A. Thompson is a director now. Upon examining the records, I find that Allan A. Chapman and Henry A. Thompson were directors from the organization, Chapman until his failure and Thompson to the present time.

Q. 6. Did the American File Company at any time become involved in debt? If yea, when and to what amount, and what means, if any, were taken to liquidate the debt? Please state fully and at large.

68 (Objected to by complainants' counsel as irrelevant, incompetent, and immaterial.)

Ans. The American File Company was organized under its Rhode Island charter June 17, 1863, as previously stated, and in the course of a very few months it was found that the cash capital was inadequate, and the capital stock was accordingly increased to $200,000 by a vote of the corporation, passed at its annual meeting July 11, 1863, as follows:

"Voted, That the increase of the capital stock to two hundred thousand dollars be authorized, upon the basis of the contract of February, 1863, between the American File Company of Baltimore and the subscribers in Rhode Island, and that the board of directors be authorized to direct the issue for the additional amount when, in their judgment, it is needed."

Under that vote the directors, by their vote of Oct. 21, 1863, called for subscriptions, and fixed the time for paying them. The Baltimore stockholders were to take twenty-five shares or one-half of the new stock, and on the 27th of October, 1863, the directors passed the following vote:

"That the directors of this company residing in Baltimore be requested to ascertain from the Baltimore stockholders, and inform this board on or before the 20th day of November next, in whose name shall be subscribed the twenty-five shares to which said Baltimore stockholders are entitled by the contract dated the 7th day of February last of the increase of capital stock authorized at the last annual meeting of the corporation."

Subsequently the names were furnished, and among the others was Allan A. Chapman for five shares of the new stock. Notwithstanding the increase of the capital stock the debt grew, and the treasurer was authorized to hire money from time to time by vote of the directors, until the spring of 1866, when the debt had become very large and was carried entirely in Rhode Island.

At the meeting of the directors of the company held May 10, 1866, Gen. Thompson, one of the Baltimore directors, was present, and I said to him I thought it was not fair for us to carry all the debt in Rhode Island, as the Rhode Island stockholders were obliged to endorse most of the paper; that the Baltimore stockholders ought to carry their share in Baltimore. He replied he thought so too, but that they never had been asked to do so. Accordingly at that meeting it was voted that the pres-

ident be appointed a committee to go to Baltimore and consult the directors and other stockholders in that city in relation to the financial affairs
69 of the company, and to attend to other business of the company in Baltimore. The result of this action was that from May 30, 1866, to Sept. 23 of the same year notes of the American File Company amounting to ninety-one thousand dollars were sent to Baltimore, and by the Baltimore directors and stockholders endorsed, and the money procured on them and remitted to the company. The amount of notes sent to Baltimore represented about two-fifths of the debt, which was fixed as Baltimore's share, they then owning about two-fifths of the stock. The other three-fifths were in like manner endorsed by the Rhode Island directors and stockholders, and the money procured thereon here. July 12, 1866, the board of directors passed this vote:

"Voted, That the treasurer be, and he hereby is, authorized and directed to make, execute, acknowledge, and deliver, in the name of this corporation, a mortgage of all the property and effects of this company, real and personal, to Cyrus Taft, of Providence, and Allan A. Chapman, of Baltimore, in trust, to secure the payment of all promissory notes, bills, or other liabilities of this company in which Henry A. Thompson, Joseph Reynolds, Hiram Woods, jr., George S. Brown, Henry R. Wilson, Richard Norris, jr., Allan A. Chapman, James Y. Smith, Cyrus Taft, Edward P. Taft, Wm. F. Sayles, Frederick C. Sayles, Claudius B. Farnsworth, and James O. Starkweather, or any of them, now are, or hereafter shall be, endorsers, joint promisers, sureties, guarantors, or in any manner liable within the term of three years from the date hereof, such security to be applied pro rata to the payment of all such notes and other liabilities existing at the time when any of the persons secured as aforesaid shall demand payment of any such notes or other liabilities which may be due and unpaid."

Thus matters continued till the latter part of 1869, when the Baltimore endorsers, or some of them, reported that the money market there was very tight, and they did not know what could be done about further renewing their share of the company notes. Prior to this latter date the company had sold out its expensive estate to the Slater Cotton Company, and had built cheaper buildings for its own accommodation.

One hundred thousand dollars of new stock had been issued to the stockholders by voluntary subscription nominally, but practically pro rata at fifty dollars per share, and the question of liquidation had been raised. The result of the report of the Baltimore directors in the latter part of 1869 was that in January 19, 1870, a special meeting of the stockholders of the file company should be holden to consider the question of issuing the mortgage bonds of the company to the amount of one hundred and twenty-five thousand dollars, one hundred thousand at once and "the remainder to be issued when in the judgment of the board of directors it shall be deemed necessary."

Subsequently seventy-five thousand more bonds were authorized, making two hundred thousand in all. This last was at a meeting of the corporation May 9th, 1871.

70 At first ninety-four thousand dollars of the first issue were taken, and subsequently ninety-eight thousand seven hundred of the second issue. These were issued to take the place of the notes which it was

proposed to take up, and it was expected and proposed that the stockholders of the file company would take the bonds pro rata, and hold them so that the debts should be and remain equitably distributed as between the stockholders of the corporation, in proportion to the stock held by them, and they were mainly so taken, it being agreed between Mr. Chapman, of Baltimore, and myself that he would see that their proportion of the bonds was taken in Baltimore, and I agreed that our proportion should be taken here. I refer to Mr. Chapman's letter of February 24, 1870, annexed to deposition of Allan A. Chapman, and marked "R. G., No. 4, H. Pitman, examiner."

Q. 7. What was done with the proportion of the bonds belonging to the stockholders resident in Baltimore and vicinity?

(Objected to by complainants' counsel as irrelevant, incompetent, and immaterial.)

Ans. The proportion of the bonds belonging to the stockholders resident in Baltimore and vicinity were sent to Mr. Allan A. Chapman, who had agreed that they should be taken there, and if they did not take the bonds he would take them all himself.

Q. 8. Did any of the stockholders in the American File Company, to your knowledge, have any negotiation with the assignee in bankruptcy of Kirkland, Chace & Co. or Allan A. Chapman as to certain bonds of the company? If yea, state what such negotiations were, and how they resulted.

(Objected to by complainant's counsel as irrelevant, incompetent, and immaterial, and also as calling for hearsay.)

Ans. Yes. The late Charles A. Nichols was president of the file company after Kirkland, Chace & Co.'s failure, that being the firm of which Allan A. Chapman was a member. He and myself, appointed by the directors as a committee for that purpose, went to Philadelphia, and there met Mr. Chapman, to see about a claim made by Robert Garrett & Sons, as holders of some of the American File Company bonds, said to have been pledged to them by Chapman. This was in 1873. We hoping to avoid complications—

(Answer objected to as hearsay.)

growing out of the question of whether these bonds were pledged for a present valuable consideration which Robert Garrett & Sons set up, he, Nichols, proceeded to Baltimore, and there entered into negotiations for the purchase of the bonds—

(All interviews not in the presence of the witness, and all conversations not in the presence of Robert Garrett & Sons, objected to as hearsay and as incompetent.)

71 Robert Garrett & Sons offering them for fifty cents on the dollar of their face value. This offer they withdrew, however, it transpiring that the assignees of Kirkland, Chase & Co. disputed the pledge, claiming it as a preference for an old debt; so Nichols opened negotiations with them, the assignees hoping to get possession of the bonds and end all question about them. Negotiations were suddenly broken off, however, and the assignees and Robert Garrett & Sons settled their conflicting claims, the assignees, among other things, conveying to Messrs. Robert Garrett & Sons the bonds in question upon the same terms which Nichols had offered to them, namely, fifty cents on the dollar of the face value, with a bond of indemnity to protect Mr. Chapman and his estate, as well

as the assignees, from all liability as a stockholder of the American File Company. A copy of the agreement of indemnity is appended to Randolph Barton's deposition, and marked "A. F., No. 1, H. Pitman, examiner."

I was one of the parties Mr. Nichols was representing when negotiating for the bonds. Since the death of Mr. Nichols, in conversation with the assignees of Kirkland, Chace & Co., they have informed me that they had such negotiations with Mr. Nichols. Mr. Nichols was acting for me and other Rhode Island stockholders in this negotiation for the bonds at fifty cents. I was in almost daily communication with him during the progress of the same, and was advised step by step in regard to the same until their termination.

Int. 9. Did you ever have any communication, either verbal or written, with Allan A. Chapman, at or before the issue of the American File Company's bonds, in regard to the manner of their being taken by the stockholders of said company? If so, please state fully, appending copies of any letter or letters if the communications were in writing.

(Objected to by complainants' counsel as irrelevant, incompetent, and immaterial, and also as calling for hearsay.)

Ans. I did have a communication, both verbal and written. Mr. Chapman was fully aware of the scheme of issuing the bonds and the object of distributing the liability and indebtedness practically as had been done by endorsing the company's notes, and entirely acquiesced in and approved of it. Mr. Chapman fully understood all the points about personal liability, and also the feeling that each stockholder should be liable, and should carry that liability for his share of the debts. I annex copies of letters written by me to Mr. Chapman, marked "W. F. S. C 1 to 4, inclusive, H. Pitman, examiner." I do not find his answers; very likely they were made in person; but the matter was fully understood by Mr. Chapman, and there were never any differences between us upon the subject.

(Objected to by counsel for complainant' as stating inferences and deductions, and not facts.)

Adjourned to to-morrow at 2½ o'clock p. m.

SATURDAY, *May 24th*, 1879.

Met pursuant to adjournment.

72 Cross-examination de bene:

X Q. 10. What was the original par value of the shares of the capital stock of the company?

Ans. One thousand dollars originally.

X Q. 11. Was this par value changed; and, if so, when and how and to what amount?

Ans. It was changed July 20, 1864, by an amendment of the charter by act of the legislature at its May session, 1864, to one hundred dollars per share.

X Q. 12. Had certificates of stock been issued at the original par; and, if so, what was done with them upon the change of the par value?

Ans. I do not remember about that; I have an indistinct remembrance that they were issued; it runs in my mind that they were; I am not certain, however; I think that new certificates at the new par value must have been substituted for them.

X Q. 13. Have you here the certificate book of the company of certificates issued for stock of the new par value at one hundred dollars per share; if so, what was the number of the first certificates issued from that book, and the date of issue?

Ans. I have the certificate book; I have no other knowledge than that from the certificate book, which says the first issue is No. 91, dated June 16, 1865; there may be another certificate book at the office of the company in which the preceding numbers may appear.

X Q. 14. Please turn now to the stub in the book you have here for certificate No. 120 and say if that does not show that that certificate was issued in view of a lieu certificate, and make a part of your answer what appears on that stub.

Ans. I can't say that it was in lieu of a prior certificate. It reads: "No. 120, issued October 14th, 1868, in favor of George S. Brown, 60 ($100.00 each) shares. Transfer from new stock made by vote of the company April 16, 1868."

X Q. 15. Please turn to the company record-book, and to the record of the meeting of October 24, 1868, and say from that, if it shows, how many shares of stock Allan A. Chapman then held in the company.

Ans. It appears from the record, from a power of attorney from Allan A. Chapman and others, that he, Allan A. Chapman, was the owner of two hundred and twenty shares of the stock of the company, and may be the owner of more; but this I don't know.

(Complainant's counsel objects to the last clause of the answer as not responsive.)

X Q. 16. Please now annex to your answer to this question a copy of the power of attorney referred to in the last answer.

73 Ans. I will annex a copy, marked "W. F. S., D, H. Pitman, examiner."

X Q. 17. What is the date and number of the last certificate issued from the certificate book you now have here?

Ans. On the last stub remaining it appears to be dated September 25th, 1874. The number is 154. There are two certificates, numbered respectively, 155 and 156, filled out, but still remaining in the book, each dated September 25, 1874. There are two others following the last filled out, without numbers and without dates, still remaining in the book.

X Q. 18. Are the ninety-eight thousand seven hundred dollars bonds which in your answer to the 6th direct interrogatory you speak of as "of the second issue" the same bonds as those referred to in your answer in this case as issued in the month of July, 1871, of an amount of about $96,000.00, at the foot of page 9 of the printed record?

Ans. They are the same.

X Q. 19. Please give the names of the persons by whom the bonds of each issue were originally taken, and the amount of the bonds of each issue taken by each one.

Ans. I am unable to answer the question.

X Q. 20. Please examine the books of the company and answer from them.

Ans. I will do so.

X Q. 21. How much stock did you hold in the company in July, 1871?

The words Henry A. Thompson being interlined in the first page before signature.

(Signed) F. BERRY.

With the letter of Lewis Andoun of the 19th inst., explanatory, attached hereto.

PAWTUCKET, *Feb.* 19, 1863.

H. A. THOMPSON, Esq.,
President pro tem. American File Co.:

DEAR SIR: After conference with the parties here in regard to the inferences drawn from the language of the document forwarded you, I find they agree with me that you have misunderstood the spirit and intent of the paper. Instead of declining to "share pro rata in the expenditures for the enlarged operations," they propose to meet the entire expense, and leave our fund untramelled to meet the expenses consequent upon the operations which you have or may authorize in connection with the ten machines.

They had inferred from the long delay in returning the paper, and the absence of any word of objection in the letters of the Messrs. Norris, received by me since you had received it, that it was perfectly understood by you as covering the terms of previous agreements, and acceptable to the American File Company. Hence they made an offer, after considering position and terms of other lots, for the one owned by Thomas J. Hill (about which he made the liberal "gold-dollar proposition," but backed down ingloriously when put to the test). He has promised to be here to-day to close it with Mr. Brown. Then, again, it was their intention (presuming, as I have before said, that they had been understood and was acceptable) to put the twenty machines immediately in course of construction, contract for the engine and boilers, shafting, belting, and everything needed to run the factory of thirty machines, and pay for them themselves, without waiting for the consummation of the charter in May. The only delay they contemplated was one of necessity on account of the weather, in regard to the building, as it is thought the frost in the ground will not permit laying the foundation before the organization is completed under the Rhode Island charter.

Mr. King says: "The contract does not require of the Baltimore corporation to expend one copper on the enlarged operation until the organization under the Rhode Island charter is complete, nor are they responsible to the Rhode Island parties to reimburse them for any expenditure they may make should any inconceivable contingency prevent the consummation of the charter."

It is understood between us that when the organization is complete the effects or assets will be merged at cost, as thoroughly as if they had all been contracted for under and by the Baltimore corporation.

Mr. King suggests if you prefer any other phraseology than that contained in the contract, make the alteration and forward it, and he will draw another.

77 I think, however, having in this his comment verbatim, you will not probably see any necessity for a change. I have not made any contract except those authorized by the American File Company in connection with the ten machines. As soon as the machines were started on

the 14-inch files we saw that the Bernot had made a mistake in the size of the pulleys—got the speed too high. Two days were then consumed in the alterations. We are running three of the large machines to-day on 14-inch "flat bastards." I found that B. had no idea of system, as he intended to put one machine at work at a time. I have, however, given him a written programme for the ten, indicating what size and character of files I want cut on each.

I have one "file-cutter" employed; expect to get another to-morrow; shall fill up the balance with boys.

Respectfully, your obedient servant,

(Signed) LOUIS ANDOUN, *Agent.*

W. F. S., C No. 1.—H. PITMAN, *examiner.*

PAWTUCKET, *Dec.* 23, 1869.

ALLAN A. CHAPMAN, Esq.:

DEAR SIR: The new file works are about completed; we are only waiting for some little matters connected with the engine to start up; shall be ready in a very few days now.

I am very anxious to confer with you in regard to our finances. It is necessary that something should be done at once. I have so far advanced the money for the building of the new works and taken care of the indebtedness here of the company, besides devoting a good deal of time to the business, and I have concluded that some arrangement must be made to relieve me from the financial part. I am willing to bear my part of the burden, but it has become too oppressive.

General Thompson writes that the notes at his bank must be reduced 25 per cent. the coming spring. Our banks here want their pay, and I know of no one who is ready to advance the money, and we must therefore devise some way to take care of the debt. My plan is to issue bonds to the amount of our indebtedness, the payment of these bonds to be secured by mortgage on the property of the company, and these bonds to have coupons attached bearing 10 per cent. interest, the bonds to be taken
78 by the stockholders in proportion as the stock which each holds bears to the debt. For instance, our capital stock is $300,000; a stockholder holding $10,000 of the stock will be required to take a bond for one-thirtieth part of the debt, which will not be far from $150,000, making the bond $5,000. This will place the debt where it belongs. I can see no reason why this is not equitable.

If it be asked, suppose a stockholder either is not able or not willing to take his proportion of the debt, what can be done? Answer, we must sell under the mortgage, and sell them out. This I am prepared to do as the next resort, but sincerely hope we can get along without it. The business looks better. We have the most complete and economical works probably ever built, a good man to manage the business, and now all we lack is a little more pluck, and I cannot help believing we shall come out all right; but in order to make a success of it we must take care of the debt, so that our treasurer will have nothing else to do but look after the business of file making.

I want to call the meeting on the 10th day of January, 1870. Will you come on? It is of vital importance that you should be present at

the meeting. It will be the most important meeting ever held by the company. Please write me by return mail if you will be here.

Yours, truly,

(Signed) W. F. SAYLES.

(Copy.)

W. F. S., C 2.—H. PITMAN, *examiner*.

PAWTUCKET, *April* 5, 1868.

ALLAN A. CHAPMAN, Esq.:

DEAR SIR: I have yours of 2d inst. Mr. Starkweather's letter, to which you refer, presented the views of the gentlemen who were present at our last meeting, and was written by their instruction, in order that a clear and distinct understanding might be given to you of the feelings of our folks here upon the subject under discussion. The question as to the best method of relieving the company of its pecuniary embarrassment is the proposition for discussion, and I believe it is the unanimous opinion of all here that the plan named at our first meeting is the only practicable one yet presented.

By the exchange of properties as talked we say we make 45,000 dollars. By paying in 50,000 dollars we are in funds (assuming that
79 we can realize from our files and steel $170,000) to pay our entire indebtedness. But it is said that we ought to have from 25,000 to 50,000 dollars for a working capital, and where will the money come from? And this line of thought prompted the idea of paying in or calling for 100,000, instead of 50,000, as talked when you were here. It is my opinion, however, and the governor agrees with me, that there will be no difficulty in borrowing upon the new works by mortgage all the money requisite for carrying stock, and in this way avoid calling upon stockholders for aid. Of course this plan cannot be carried out at once; it will require time to make the changes.

Now, if your folks will say they will take their proportion of such new stock as may be thought expedient to issue, on a basis of $50,000 to be paid in, with the understanding that you are to carry your proportion of the debt until the changes referred to can be carried out, I think this plan will be accepted.

I am exceedingly sorry that you cannot come on with the general; do so if a possible thing, for this is a critical period with the file company. It is simply a question, shall we save 75 per cent. of our stock or close up the business, in which case, in all probability, we shall not only lose our stock but be called upon to contribute to pay the deficiency which may arise in closing up. Please remember me kindly to the general and Mr. Woods.

I omitted to say that orders continue to come in more freely for files, and the works were started yesterday.

Yours, truly,

W. F. SAYLES.

P. S.—Your proportion of the debt to carry in Baltimore until matters can be straightened out will not be far from $104,000.

(Copy.)

W. F. S., C 3.—H. PITMAN, *examiner.*

PAWTUCKET, *Nov.* 5, 1869.

ALLAN A. CHAPMAN, Esq.:

DEAR SIR: I intended to have written you soon after our last meeting, but I have been so overburdened with cares, have seen no opportunity, and have now only time to say a word or two. Our buildings are very nearly completed; will be in the course of a week. Since Mr.
80 Norris was here we have put up the wooden building in answer to the plan which he saw, viz, 180 x 30; also the engine and boiler-house of brick. The engine we purchase of the Delmata Engine Company of New York, the one they had on exhibition at the fair. We give them 3,000 dollars' worth of files for it, and a prospect, if the files suit them, of supplying them hereafter. They employ 1,500 hands, and consequently use a large quantity.

The boiler we have of Corliss, for which we are to pay him $1,800; 1,300 in money, balance in files. We ought to make pretty good headway toward starting up in the next fortnight. Our new stockholders, Mason, Slater, and Nichols, show a good deal of interest in the matter, and are for putting things along in good shape. Eichbaum takes hold in good earnest, and, so far as I can judge, he is the right man; he has energy and skill, and if he can't make it go no one can.

As soon as we are ready to "launch the ship" we shall give you notice, and shall expect you to attend the stockholders' meeting which I propose to call at that time.

The object of the meeting will be to arrange for our finances, a very important matter to consider; but I see no difficulty in the way of arranging matters satisfactorily, provided all will put their shoulders to the plough, and if they will not I think a plan can be adopted to rule out such as will not do their part.

I want to distribute the debt pro rata among the stockholders in some form or other. I mention this subject that you may think it over.

Please ask Mr. Norris to send his account of files sold; Mr. Eichbaum is very particular, and it will not do to discourage him. We can't keep our books straight unless we know whether the files have been sold; and, if so, whether paid for or not. If he would render an account monthly it would help us to keep our books straight, and, beside, we want to know what he is doing. We need all the encouragement we can possibly have. I intend to write Mr. N. soon as I can get time, and also Gen. Thompson.

Yours, truly,

W. F. SAYLES.

Say to the general it looks more like a dividend now than ever before, but when, Mr. Norris can tell better than I.

81 W. F. S., C 4.—HENRY PITMAN, *examiner.*

PAWTUCKET, *December 7th*, 1869.

ALLAN A. CHAPMAN, Esq.:

DEAR SIR: It will be very desirable when we start our machinery that we have a sufficient number of orders ahead to work economically,

and I have been hoping to hear from Mr. Norris that he had such an order from the Baltimore and Ohio Railroad as would keep us busy for a while. Please say to him we are close upon his heel, and shall be upon him before he is aware of it if he do'sn't hurry up.

Our buildings are all completed, the file machinery set and nearly ready for operation; will be when the engine starts, which will be next week. The new works are considered model works for our business, and had we started in this way in the beginning I have no doubt the concern would have been successful, and it now remains for us to make up for the blunders of the past, and in order to do so we must sell the files. Mr. Eichbaum seems to be just the right man, a driver and good mechanic, and he will do his part well, I think; we are pleased with him so far. As soon as we get started I want a full attendance at a stockholders' meeting which we shall then call. This will be the most important meeting the company have ever held, as it will determine whether the property of the company had better be sold to pay its indebtedness or provide some other way to do so. We must do something to relieve us from any pecuniary embarrassment, and if we would get back the money lost we must not tie Mr. Eichbaum's hands up, so that he will get discouraged. He will require a few thousand dollars to work with, I think; perhaps ten thousand dollars will answer. My idea has been that something ought to be done to compel each stockholder to carry his part of the load, or sell him out, and I think a plan can be arranged to do so; at any rate something must be done. I have furnished all the money in building up, besides looking after the business since Mr. Starkweather left, and when the ship is ready for sea I want her to have the proper outfit, and she must have if she starts. I shall expect you at the meeting (to be called) without fail, and I do hope you will not disappoint me. We will give a fortnight's notice of the meeting, in order that arrangements can be made on the part of the stockholders to be present, and in the call I think we had better state plainly the object of the meeting.

Please remember me to the general and Mr. Norris.

Yours, truly,

W. F. SAYLES.

82 W. F. S., D.—H. PITMAN, *examiner*.

We, the undersigned stockholders of the American File Company, hereby authorize and empower W. F. Sayles, esq., to vote the number of shares opposite our respective signatures at a special meeting of the stockholders, to be held at the office of the company, in Pawtucket, R. I., on the twenty-fourth of October, 1868.

BALTIMORE, *October 22nd*, 1868.

Witness.	Stockholder.	No. of shares.
W. H. Buck	Allan A. Chapman	Two hundred and twenty.
Wm. H. Buck, jr.	Joseph Reynolds	Seventy.
W. G. Bowdoin	George S. Brown	Seventy.
W. H. Buck, jr	H. A. Thompson	Sixty.
Charles Rous	Hiram Woods	Fifty shares.

A true copy. Attest:

HENRY PITMAN, *Examiner*.

W. F. S., E.—H. PITMAN, *examiner.*

Bonds of American File Company.

Names of persons by whom the bonds of 1st issue were originally taken.	Names of persons by whom the bonds of 2nd issue were originally taken.
A. A. Chapman.	A. A. Chapman.
Charles A. Nichols.	W. F. Sayles.
James Y. Smith.	Fales, Jenks & Sons.
W. F. Sayles.	W. S. Slater.
E. P. Mason.	E. P. Mason.
W. S. Slater.	F. C. Sayles.
Lewis Fairbrother.	Lewis Fairbrother.
F. C. & D. C. Sayles.	Nahum Bates.
Fales, Jenks & Sons.	James Y. Smith.
Stephen A. Jenks.	
Alvin Jenks.	
John R. Fa es.	
Nahum Bates.	
R. C. Wilcox.	
L. A. Thornton.	
James Y. Smith & Nichols.	

83 Amount of 1st issue of bonds taken by—

Allan A. Chapman	$44,500
James Y. Smith	2,300
Charles A. Nichols	2,800
W. F. Sayles	7,800
E. P. Mason	6,700
W. S. Slater	6,700
Lewis Fairbrother	5,500
F. C. & D. C. Sayles	4,400
Fales, Jenks & Sons	2,000
Stephen A. Jenks	1,800
John R. Fales	1,800
Alvin F. Jenks	1,800
Nahum Bates	1,000
R. C. Wilcox	500
L. A. Thorton	400
James Y. Smith & Nichols	4,000
	$94,000

Amount of 2nd issue of bonds taken by—

A. A. Chapman	$44,500
W. F. Sayles	11,400
Fales, Jenks & Sons	8,500
W. S. Slater	7,700
E. P. Mason	7,700
F. C. Sayles	7,100
Lewis Fairbrother	5,900
Nahum Bates	1,500
James Y. Smith	4,400
	$98,700

W. F. S., F.—H. PITMAN, *examiner.*

Extract from record-book of American File Company, under date of January 19, 1870.

After some further discussion Mr. Sayles offered the following resolutions:

84 Whereas there are sundry liabilities of the American File Company for which it is necessary to provide:

Resolved, 1st. That this company issue its bonds for the sum of $125,000, bearing interest at the rate of ten per cent. per annum, payable on the first day of January and July of each year; the principal payable in five years, subject to the right on the part of the company to redeem the same at any time after one year, upon notice of not less than three months; to be advertised for not less than ten consecutive days of publication in the Providence Daily Journal, and, as far as practicable, to be communicated to the holders of said bonds.

2d. These bonds shall be dated January 1st, 1870, with coupons attached, and shall be in the sum of one hundred dollars each, and shall be signed by the president and countersigned by the treasurer, and shall be secured by mortgage executed by the president and secretary upon all the property, real and personal. The mortgage shall be made payable to trustees, to secure the payment of the bonds and interest as aforesaid:

Provided, That no one of said bonds shall be issued until at least three-quarters of the whole amount shall be subscribed for by responsible parties, and when issued the treasurer shall dispose of them at par, with such an amount of interest as may have accrued thereon. Each stockholder shall have the privilege of subscribing for his proportion of said bonds, which privilege shall expire unless taken and paid for before April 1, 1870. The surplus not then taken shall be disposed of in the order of applicants.

3d. The executive committee are hereby instructed to prepare a form of bond and mortgage and report the same at the time to which this meeting shall be adjourned.

At the request of Mr. Earl P. Mason, a fourth resolution was added, which Mr. Sayles presented in this form:

4th. That but one hundred thousand dollars of the aforesaid bonds shall now be issued, the remainder to be issued when, in the judgment of the board of directors, it shall be deemed necessary.

Mr. Lewis Fairbrother then moved that the resolutions be adopted, and the motion was seconded by Mr. Chas. A. Nichols, and, upon a call of each stockholder present, the resolutions were unanimously passed.

85 W. F. S., G.—H. PITMAN, *examiner.*

Extract from record-book of American File Company, under date of January 28th, 1870.

The minutes of the last meeting were read and approved.

Mr. Nichols, on behalf of the executive committee, presented a form of bond and mortgage as instructed by the meeting of the 19th inst.

At the suggestion of Mr. Slater, the second resolution of those passed on the 19th inst. was amended to read, instead of the amount of each bond being one hundred dollars, they shall be issued in the manner following: 50 bonds of $1,000 each, 90 bonds of $500 each, and 50 bonds of $100 each, the balance of the $125,000 to be in the same proportion as nearly as may be.

The bond and mortgage presented by the executive committee was then adopted, subject to the revision of the company's counsel.

W. F. S., H.—H. PITMAN, *examiner.*

Extract from record-book of American File Company, under date of May 9th, 1871.

The minutes of the last meeting were read and approved, and afterwards Mr. Nichols moved that the bonds authorized to be issued by the company under vote of January 19th, 1870, be increased from $125,000 to the amount of $200,000, which motion was seconded by Wm. F. Sayles, and upon a vote being taken, the motion was carried unanimously.

Wm. F. Sayles moved that on the issue of each bond the words "Interest paid to the 8th of May," be written on the face of the coupon of July 1st, 1871, being the date at which the parties taking the bond settle for the same.

Seconded by F. C. Sayles, and unanimously carried.

86 W. F. S., I.—H. PITMAN, *examiner.*

Extract from record-book of American File Company, under date of July 19th, 1865.

On motion of Mr. W. F. Sayles, it was

Voted, That the capital stock of this corporation be, and the same hereby is, increased by the sum of seventy-thousand dollars, to be issued at such times, in such amounts, and in such manner as may be determined by the board of directors; provided, that the stockholders shall be entitled to such new stock in proportion to the amount of stock by them held.

W. F. S., J.—H. PITMAN, *examiner.*

Extract from record-book of American File Company, under date of April 16th, 1868.

Resolved, That whereas the affairs of this company have reached a point when it is absolutely necessary that the further sum of $50,000 shall be raised by the sale of new stock as already proposed, the Baltimore directors are requested to call the Baltimore stockholders together to ascertain what proportion of the proposed increase of the capital stock will be taken by them, and the Rhode Island directors are requested to pursue the same course in regard to the Rhode Island stockholders.

87 And said cause came on to be heard at the November term of said court, A. D. 1879, upon the pleadings and proofs filed therein before judges John Lowell, judge of the circuit court of the United States

for the first circuit, and John P. Knowles, judge of the district court of the United States for said district of Rhode Island, and was argued by the counsel for the respective parties and held for advisement.

And on the first day of March the following opinion was filed therein.

88 Circuit court of the United States, district of Rhode Island.

ROBERT GARRETT ET AL.
v.
WM. F. SAYLES ET AL.

WM. F. SAYLES ET AL.
v.
ROBERT GARRETT ET AL.

Before LOWELL AND KNOWLES, *JJ.*:

Statement of the case.

The American File Company was incorporated by an act of the legislature of Rhode Island in May, 1863, and was organized in the June following. The company bought a patent under which the manufacture of files had been before carried on in Baltimore, and the persons who sold them the patent took nearly one-half the stock of the new company. The capital appears to have been insufficient for the business, and for some years money was raised, or credit was obtained upon the notes of
89 the company, endorsed by the stockholders, all of whom were liable for the debts of the company under the statutes of Rhode Island relating to manufacturing corporations, by reason of the omission to file certain statements necessary to relieve that liability.

In 1870 the company duly resolved to issue bonds, secured by a mortgage of all their corporate property, real and personal, to be offered to the stockholders pro rata, until April 1st, 1870, and such as were not then taken were to be disposed of "in the order of applicants." The bonds and mortgage were made accordingly. The bonds were payable to bearer in five years from January 1st, 1870, with interest at 10 per cent. per annum, for which coupons were attached to them. Allen A. Chapman was the principal stockholder in Baltimore, and he took and paid for in the endorsed notes of the company the full proportion of bonds allotted to the stockholders in that city. The notes with which he paid for them belonged to his firm of Kirkland, Chase & Company. Several of the smaller stockholders refused to subscribe, and he or his firm retained the bonds.

Kirkland, Chase & Company were merchants doing a large business in Baltimore, and for thirty years or more they had dealt with the plaintiffs, Robert Garrett & Sons, bankers, of Baltimore; among other things they used to borrow money of the bankers upon collateral security. In the summer of 1872, the current debt was about five hundred thousand dollars. Among other loans was one of fifty thousand dollars made May 10th, 1872, for which notes of third persons were deposited. These were afterwards exchanged for a cargo of sugar imported by the Shiloh, for which Kirkland, Chase & Company deposited with Garrett & Sons the warehouse receipt. By the arrangement between the parties all securities were to be held for the general balance of account.

90 Kirkland Chase & Company failed July 11th, 1872, and it was then made known for the first time to Garrett & Sons that the cargo of sugar had been sold on the 30th of May, while they still held the warehouse receipt. Presently, after the failure, Chapman handed to Garrett & Sons, instead of the cargo of sugar, the bonds of the File Company, with an assignment dated May 30th, 1872. The firm of Kirkland, Chase & Company, and each of its members became bankrupt in October, 1872, and the assignees disputed the title of Garrett & Sons to these bonds and several other securities as a fraudulent preference. A settlement was afterwards made by which the assignees relinquished all title to the several securities, and paid certain moneys to Garrett & Sons, and the latter relinquished the right to prove against the assets for the excess of their debt, above the value of the securities, which turned out to be a very considerable sum. The agreement, which was approved by the court of bankruptcy, and carried out, was in writing, and contained this stipulation:

"And said Robert Garrett & Sons likewise further agree that whereas said assignees have been offered the sum of fifty cents on a dollar for certain bonds of the American File Company, now held by Messrs. Robert Garrett & Sons, which were received as collaterals from Messrs. Kirkland, Chase & Company, and an indemnification against loss or damage of any kind as holders of certain stock of said American File Company as assignees of A. A. Chapman and Kirkland, Chase & Company, said Robert Garrett & Sons hereby agree to indemnify said assignees against loss or damage of any kind as holders of the stock aforesaid, and in consideration of said acts of said assignees said Robert Garrett & Sons do also hereby agree to indemnify the said assignees and the estate of Kirkland, Chase & Company, and the estate of A. A. Chapman, against loss
91 or damage of any kind, for releasing their claim to said bonds of the American File Company, now held by Messrs. Robert Garrett & Sons, and agree to hold said assignees and said estates harmless for said transfer and release."

The affairs of said Kirkland, Chase & Company had been nearly settled, and the several bankrupts had been discharged before this case was begun.

In June, 1876, Garrett & Sons brought an action upon the bonds in the supreme court of Rhode Island, and recovered judgment against the American File Company, the amount of principal and interest $132,611.33, with $51.10 costs.

As the law then stood, creditors recovering judgment against a manufacturing corporation whose stockholders were liable for its debts might levy their execution upon the persons and property of such stockholders, as if for their own proper debts. The Rhode Island stockholders of the file company thereupon filed a bill in equity in the supreme court of Rhode Island to enjoin Garrett & Sons from levying their execution upon them or their property, alleging that when the bonds of the corporation were issued in 1870 the arrangement was that the bonds were a final payment of the debts of the company, relieving the stockholders from liability, and requiring them to look for payment of the bonds only to the property which was mortgaged to secure them, or at all events to the property of the company, and not to the personal responsibility of the stockholders;

that Garrett & Sons had notice of this equity when they acquired their title to the bonds, and stood in the place of Chapman, or Kirkland, Chase & Company; that the plaintiffs had besides agreed to indemnify the assignees of those shareholders, and that a court of equity would enforce that liability in a suit between the plaintiffs and defendants, to
92 save the circuity of action which would ensue if the defendant should call on the assignees for contribution, and they again on the plaintiffs for indemnity. To this bill Garrett & Sons filed an answer, and the plaintiffs replied. The cause was then removed to this court.

In 1877 the legislature of Rhode Island passed an act taking away the right to levy upon stockholders an execution upon a judgment against such corporations, and substituted a suit in equity or action of debt. Garrett & Sons afterwards brought a bill in this court against the stockholders of the file company resident in Rhode Island, to which they filed an answer setting up the same equities which they had relied on in their bill filed to restrain the execution. Evidence was taken to be used in both cases, and they were heard together.

James Tillinghast and John K. Cowen for Garrett & Sons.
A. Payne and Chas. Hart for W. F. Sayles et al.

93 *Opinion.*

LOWELL, *J.:*

For convenience we shall call Garrett & Sons, plaintiffs, and Sayles and others, stockholders of the American File Company, defendants.

We need not consider the bill filed in the State court by these defendants to restrain the plaintiffs' levy of execution, and removed to this court, because our powers to stay a process issuing out of the State court is doubtful unless when such injunction had been issued while the case was in the State court; and because the plaintiffs, while insisting that the law of 1877, abolishing the remedy by levy upon the stockholders and substituting a bill in equity, cannot be enforced against them consistently with the Constitution of the United States or with that of Rhode Island, have acquiesced in fact and brought their bill in this court under that act, and the pleadings in that suit raise all the questions between the parties.

The defendants, admitting that they are stockholders of the corporation and liable generally for its debts, set up against these plaintiffs two equitable defences.

The first is that the stockholders in the year 1870 agreed to pay the debts of the company in substantial accordance with their respective ultimate liabilities inter sese by taking bonds in that proportion, and to look for reimbursement to the property conveyed in mortgage to trustees to secure the bonds, or to that property and any which the company might afterwards acquire.

We see no evidence that the parties concerned, the stockholders,
94 made any such agreement as is here supposed. Being under a statute liability for the debts of the company and choosing to remain so—for they could have put an end to this state of things by filing an annual statement of their affairs—they found it more convenient to raise money by negotiating bonds with five years to run rather than notes which needed to be often renewed. They secured their negotiable bonds

by a mortgage in order to increase their value, not to diminish it. It was an ordinary arrangement which had no concealed equities. The negotiable bonds were to be negotiable and to have the same properties in the hands of the shareholders as in those of other "applicants" who should take them. No doubt one principal motive which induced the shareholders to take the bonds in the first instance was that the company must be kept afloat, but there was no agreement expressed and none arises from the nature of the transaction that the bonds should not be sold, or that they should hold good only against the property of the company.

We suppose it to have been taken for granted that the bonds were amply secured, in which case no such question as is now before us could have arisen. At any rate, it appears from the correspondence between the parties and from the votes, and all the evidence in the record, that the bonds were intended to be what they purport to be, the negotiable promises of the corporation, as much so as the notes for which they were substituted.

The second defence is, that the plaintiffs have agreed to stand in the place of stockholders by their stipulation to indemnify the assignees of Chapman as such stockholders.

We agree that if the assignees when this stipulation was made were
95 stockholders in the sense of being liable for the debts of the company, the defense is a good one to the extent of their proportionate share of the debts, so that plaintiffs could only recover in equity the difference between the price of their bonds and such proportionate liability. This equity does not depend upon privity of contract, but upon an equitable duty. Dering v. Earl of Winchelsea, 1 Lead. Case Eq. (4 Am. ed.) and notes.

We are of opinion, however, that under the statutes of Rhode Island neither assignees in bankruptcy nor the assets in their hands are liable to contribute under the circumstances stated in the record, which are, simply, that they have in their possession the certificates of stock, and recite in the agreement with the plaintiffs that they are stockholders. It does not appear how far, if at all, they have acted as stockholders, and it is certain that they had nothing to do with contracting this debt.

In Massachusetts, where the law is as nearly as possible identical with that of Rhode Island, the liability was held not to attach, though the assignees had attended and voted at meetings of the stockholders and done other unequivocal acts of ownership (Gray v. Coffin, 9 Cush., 192.)

The general law of bankruptcy would give the same answer to the question. It is an anomaly, perhaps, but is the undoubted rule, that assignees are not bound to accept onerous property. Its application to leaseholds is familiar. (Mills v. Aureol, 1 Smith Lead. Cases (7 Am. ed.), 1116, and notes; and as to an onerous litigation or contract, Smith v. Jordan, 6 Law Reporter, 313; Streeter v. Sumner, 31 N. H., 542; Amory v. Lawrence, 3 Clifford, 523.)

The rule has been often applied to shares in a company liable to
96 the onus of assessments, or calls as they are called in England, and would apply a fortiori to an unlimited liability. (See Re Lond & Prov. Teleg. Co., L. Rg. Eq. 653; South Staffordshire R. Co. v. Burnside, 5 Ex., 129; Levi v. Ayers, 3 App. Cas. 342; Metropolitan Bk. v. Oxford, L. R., 10 Eq., 398.)

The peculiar statutory liability imposed upon shareholders in New Eng-

land is not one which can be proved as a debt against a bankrupt's assets unless it is liquidated and ascertained by a decree in equity before the time for proving debts has gone by. (Kelton v. Phillips, 3 Met., 62; Bangs v. Lincoln, 10 Gray, 600; James v. Atlantic Delaine Co., 11 N. B. R., 390.)

It follows that Chapman, or the several members of his firm, according to the fact of ownership, would remain personally liable to contribute to the debts of the corporation notwithstanding their discharge in bankruptcy, because only provable debts are discharged, and because they would remain shareholders. (See Martin's Patent Co. v. Morton, L. R. 32, B. 306; Hasties Case, L. R. 7, Eq. 3, 4 Ch. 274.)

It is plain upon inspection of the contract between the plaintiffs and the assignees of Kirkland, Chase & Company, that the former did not undertake to become stockholders of the corporation, nor to indemnify Chapman or the members of the firm personally, but that out of abundant caution the assignees took an indemnity for themselves and the estate in their hands, and since the assignees are not liable there is no claim or right to which the defendants can be subrogated.

Equity might require the plaintiffs to apply the mortgaged property or to call upon the trustees of the mortgage to apply it to diminish
97 the debt so far as it would go before a final decree should be rendered against the defendants. The pleadings do not raise this question, and we understood at the argument that the property had been converted into money and would be properly disposed of without the intervention of the court. We decide, therefore, that in the bill filed by Garrett & Sons, there must be an interlocutory decree for the complainants.

98 *Final decree. Entered July 6th, 1880. June term, 1880.*

This cause came on to be heard at the last term upon bill, answer, and proofs, and was argued by counsel, and thereupon, upon consideration thereof, it was at this term ordered, adjudged, and decreed—

That each and all of said defendants in the pleadings mentioned (except the said Horatio Rogers and the said Charles F. Mason, Earl Philip Mason, and Arthur Livingston Mason, trustees and administrators as in the pleadings set forth) and the estate of the said James Y. Smith, deceased, in the hands of their said respective trustees and administrators, are jointly and severally liable to the complainants for the payment of the said judg-
99 ment of the said complainants against the said American File Company in the pleadings mentioned.

And that said complainants have and recover of the said defendants so liable for the same, as aforesaid, and of the said Horatio Rogers, as trustee and administrator of the estate of the said James Y. Smith, deceased, and of the said Charles F. Mason, Earl Philip Mason, and Arthur L. Mason, trustees and administrators of the estate of said Earl Philip Mason, deceased, the sum of one hundred and sixty-five thousand four hundred and forty dollars and sixty-five cents, accordingly, together with their costs in this cause to be taxed by the clerk.

Entered as the decree of this court this 6th day of July, A. D. 1880.

HENRY PITMAN, *Clerk.*

100 From which decree the defendants, on the same day in open court, claimed an appeal to the Supreme Court of the United States.

And on the 10th day of September, A. D. 1880, the following bond was filed.

Appeal bond.

Know all men by these presents that we, William F. Sayles, Frederick C. Sayles, Lewis Fairbrother, and Alvin F. Jenks, all of Pawtucket, in the State of Rhode Island, William S. Slater, Charles F. Mason, E. Philip Mason, Arthur L. Mason, trustees and administrators of the estate of Earl P. Mason, deceased, Horatio Rogers, trustee and administrator of the estate of James Y. Smith, deceased, all of Providence, in said State of Rhode Island, John R. Fales and Stephen A. Jenks, both of Lin-
101 coln, in said State of Rhode Island, as principals, and George C. Nightingale, of Providence, in the State of Rhode Island, Benjamin F. Greene, and John A. Adams, both of Lincoln, in the State of Rhode Island, and Henry L. Fairbrother and Scott W. Mowry, both of said Providence, as trustees are held and firmly bound unto John W. Garrett, Robert Garrett, and Thomas Harrison Garrett, all of Baltimore, in the State of Maryland, and all citizens of the State of Maryland, and copartners in business in said Baltimore under the firm-name and style of Robert Garrett and Sons, in the full sum of two hundred and fifty thousand dollars ($250,000), to which payment well and truly to be made the said parties hereinbefore named as principals in this bond bind themselves and their respective heirs, executors, and administrators, jointly and severally, with the parties hereinbefore named as sureties in this
102 bond, who bind themselves and their respective heirs, executors, and administrators, jointly and severally, with the parties hereinbefore named as principals in this bond, firmly by these presents. Sealed with the seals of the respective parties named in this bond as principals and sureties, and dated this eighth day of September, A. D. 1880.

Whereas at a circuit court of the United States holden at Providence, within and for the district of Rhode Island, by adjournment, on the sixth day of July, A. D. 1880, in a suit in equity depending in said court between the said Robert Garrett & Sons, complainants, and William F. Sayles and others, respondents, a decree was rendered against the said William F. Sayles & others for the sum of one hundred and sixty-five thousand four hundred and forty & $\frac{65}{100}$ dollars, debt and costs of suit, and said William F. Sayles & others, respondents, have appealed
103 in open court from said decree to the Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, on the second Monday of October next ensuing the date hereof:

Now, the condition of the above obligation is such that if the said William F. Sayles & others, respondents, shall prosecute said appeal with effect, and answer and pay said judgment or decree, and just damages for delay,

and interest, and all costs if they fail to make their plea good, then the above obligation to be void; else to be and remain in full force and effect.

CHARLES F. MASON, [L. S.]
EARL PHILIP MASON, [L. S.]
ARTHUR LIVINGSTON MASON, [L. S.]
Trustees & Administrators Estate of Earl P. Mason.
W. F. SAYLES. [L. S.]
F. C. SAYLES,
By W. F. SAYLES. [L. S.]
HORATIO ROGERS, [L. S.]
Administrator & Trustee of James Y. Smith's Estate.

In presence of—
CHARLES HART.
JOHN R. FALES. [L. S.]
104 A. C. GREENE, Jr.
STEPHEN S. JENKS. [L. S.]
A. C. GREENE, Jr.
ALVIN F. JENKS. [L. S.]
A. C. GREENE, Jr.
L. FAIRBROTHER. [L. S.]
T. R. WILKINSON.
WM. S. SLATER. [L. S.]
GEO. A. DAVIS.
GEO. C. NIGHTENGALE. [L. S.]
WM. G. NIGHTENGALE.
B. F. GREENE. [L. S.]
GEO. P. GRAW.
JOHN A. ADAMS. [L. S.]
HENRY R. DAVIS.
SCOTT W. MOWRY. [L. S.]
HERBERT W. MOWRY.
HENRY L. FAIRBROTHER. [L. S.]
WM. G. NIGHTENGALE.

September 10th, 1880.

Approved.

JOHN P. KNOWLES,
District Judge.

105 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE CIRCUIT COURT,
At Providence, September 14th, 1880.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing ninety-four pages contain a true transcript of the record Robert Garrett & Sons v. The American File Company, and all of the proceedings therein.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

[SEAL.] HENRY PITMAN, *Clerk.*

106 At a circuit court of the United States for the first circuit and district of Rhode Island, begun and holden at Providence, in said district, on the 15th day of June, A. D. 1880.

Hon. Nathan Clifford, associate justice of the Supreme Court of the United States for the first circuit, presiding.

The following cause, among others, was disposed of:

107 Circuit court of the United States, district of Rhode Island.

WM. F. SAYLES AND OTHERS *vs.* ROBERT GARRETT & SONS. } In equity. No. 980.

Charles Hart, A. Payne, solicitors for complainants; James Tillinghast, solicitor for defendants.

Be it remembered that on the 19th of March, 1878, the following cause in equity was removed from the supreme court of Rhode Island to the circuit court of the United States for the district of Rhode Island.

Complainants' bill.

William F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederick C. Sayles, in right of himself and in right of his wife Debbie C. Sayles, Alvin F. Jenks, John R. Fales, Frederic Bates, and Louise A. Thornton, widow, all of Pawtucket, in Rhode Island; Wm. S. Slater, John R. Bartlett; Horatio Rogers, trustee of the estate of James Y. Smith, deceased; Edward P. Taft, Cyrus Taft, Henry A. Bartlett, Wm. Russell, Samuel W. Foster, and Charles F. Mason, Earl Phillip Mason, and Arthur L. Mason, trustees of the estate of Earl P. Mason, deceased, all of Providence, in said State; Joseph E. Cole, of Woonsocket, in said State;

108 Stephen A. Jenks and James Whittle, both of Lincoln, in said State, and Annie Wilcox, of Fall River, in the State of Massachusetts, bring this their bill of complaint against John W. Garrett, Robert Garrett, and T. Harrison Garrett, copartners, doing business in Baltimore, in the State of Maryland, under the name of Robert Garrett & Sons.

And thereupon your orators complain and say, that prior to the year 1862, one Allan A. Chapman, together with other persons of the city of Baltimore, in the State of Maryland, were engaged in the manufacture of files, in the said city of Baltimore, under the corporate name of the American File Co., claiming to be the owners of a patent for a new and useful invention for cutting files by machinery. That during said year 1862, said parties induced certain persons, including your orators, then being residents of the State of Rhode Island, to obtain a charter from the general assembly of Rhode Island, and to organize a company thereunder, under the name of the American File Co., for the purpose of purchasing from American File Co., in Baltimore, their property aforesaid, consisting principally of the patent aforesaid, and for the carrying on in Rhode Island the business of manufacturing files. That such charter was obtained from the general assembly of Rhode Island, and company organized thereunder on the day of , A. D. 186 .

That the said Chapman, and his Baltimore associates, in considerations

of the conveyance of the property aforesaid, of said Baltimore co. to the American File Co., in Rhode Island, received a large proportion of the stock of the company in Rhode Island, in the aggregate nearly one-half of the capital stock thereof.

And your orators further represent that said Rhode Island co., on or about the day of , A. D. 186 , commenced the business of manufacturing files in the town of Pawtucket, in Rhode Island, and continued the same for several years thereafter, but with great loss in the business; that during all said time the said Chapman, and the other Baltimore stockholders, were directors in said company, and active managers of the same. That at the commencement of the year 1870, there was outstanding a large indebtedness of the said company represented by promissory notes of the company, endorsed by the said Chapman and other of the stockholders in Rhode Island and Baltimore, which said promissory notes had been in pursuance of agreement endorsed and negotiated by the stockholders substantially in the proportion of the stock held by them, that is to say, the Baltimore stockholders either held or had negotiated upon their endorsement promissory notes bearing the same proportion to the whole indebtedness that the stock held and owned by them bore to the whole amount of the stock of the company.

At this time, said indebtedness being very large in amount, the said endorsers were desirous of reducing the same, and various plans were proposed to effect that end. Among others it was proposed that the
109 several stockholders should each contribute in proportion to the stock held by them an amount sufficient to pay the debts of the company, and should receive therefor the bonds of the company, secured by a mortgage of the company on their corporate property, and bearing a high rate of interest, to an amount equal to the sums so contributed respectively. Accordingly, in the early part of the year 1870, at a meeting of the stockholders called for that purpose, it was voted that the bonds of the company be issued to the amount of one hundred and twenty-five thousand dollars, to bear interest at the rate of ten per cent., and to be secured by a mortgage of the real and personal property of the company. Said mortgage was executed and bonds issued thereunder to the amount of ninety-four thousand dollars, which were received and taken by the Baltimore and Rhode Island stockholders in the proportion in which the stock was held by the two classes of stockholders, the proceeds therefrom being applied to retire a like amount of the indebtedness of the company. Subsequently and in the month of July, 1871, a further amount of about ninety-six thousand dollars of bonds were issued without authority of the stockholders, but which were taken by the stockholders in like manner in proportion to their stock, and a like amount of the indebtedness of the company retired. [But although the bonds last above-named were issued without authority previously given by a vote of the company, they were issued with the knowledge of the stockholders, and their issue was ratified by the stockholders, and the same were, and are, valid and binding to the same extent upon the company and the stockholders as if their issue had been authorized by a vote of the company.—Amended by consent. H. P. clerk.]

And your orators further represent that before the issuing of any of the bonds as aforesaid, subscription papers were drawn up for the purpose of

obtaining the signatures of the several stockholders, binding them to take their several proportions of the bonds, which were duly signed by stockholders in Rhode Island, and signed by the said Allan Chapman for himself and in behalf of the other stockholders in Baltimore.

The proper proportionate amount of bonds for the said Chapman, and the other Baltimore stockholders, being the amount for which said Chapman had subscribed, was sent to the said Allan Chapman, and charged to him on the books of the company, as were all the other bonds charged to the parties to whom the same were respectively delivered.

The said Chapman subsequently duly remitted to the company a like amount of the promissory notes of the company, which had been taken up by the said Chapman for himself and the Baltimore stockholders, and which were duly cancelled.

The bonds of the said company so issued were all of the same tenor, all being dated January 1st, 1870, and payable in five years after date, with coupons attached, interest at the rate of ten per cent. semi-annu-
110 ally. No interest was ever paid on said bonds. The said Allan A. Chapman continued a director and manager in the company until his failure hereinafter mentioned in the autumn of 1872.

And your orators further represent that, in the month of September, A. D. 1872, the firm of Kirkland, Chase & Co., of which said Chapman was a partner, failed, and the firm, and each of the members thereof, were subsequently adjudicated bankrupts under the act of Congress, and made assignments of their property, copartnership and individual, for the benefit of their creditors.

And your orators further represent that, after the failure of said firm and said Chapman, the said Chapman sent to the said Garrett & Sons all the bonds of the American File Company, then held by him or in his possession, being bonds issued as aforesaid by the said American File Company, and being the bonds now held by the said Garrett & Sons, and upon which the judgment hereinafter mentioned was obtained, said bonds being sent to the said Garrett & Sons by the said Chapman without the payment of any consideration therefor by said Garrett & Sons, or any previous notice to Garrett & Sons of his intention so to do.

And the said Garrett & Sons, though they never paid any consideration for said bonds, yet thereafterwards claimed to hold said bonds as security for a specific loan of fifty thousand dollars theretofore made by them to the said Kirkland, Chase & Co. in May, 1872, and to have no other interest in said bonds than as security as aforesaid.

And your orators are informed and believe that the assignees in bankruptcy of the said firm, and said Chapman, refused to recognize the claim of the said Garrett & Sons, or that they had any title to or interest in, or lien upon said bonds, and claimed that said bonds should be surrendered to them as belonging to the assigned estates.

And thereupon the said assignees entered into negotiations with certain of the stockholders of the American File Company, in the State of Rhode Island, for the transfer to them of the said bonds for the sum of fifty cents upon the dollar upon the principal of said bonds, with an understanding of said stockholders to guarantee the said Chapman and the assigned estates against any liability for the indebtedness of the American File Company. The assignees invited the proposition from the said

stockholders, assuring them, if made, it would probably be accepted. The proposition was made accordingly, but before its acceptance the said defendants effected a general settlement with the said assignees of various points and matters in dispute between them touching several parcels of property the said defendants becoming thereby the purchasers from said assignees of the said bonds of the American File Company, among other property, on precisely the same terms and conditions as were contained in the offer of stockholders of the American File Company aforesaid, the said defendants giving to the assignees an agreement in
111 which they covenanted and agreed to indemnify the said assignees against loss or damage of any kind as holders of the stock of the American File Company in their hands as assignees of said Kirkland, Chase & Co., and of said Chapman, and to indemnify the said assignees and the estate of Kirkland, Chase & Co., and the estate of said Chapman against loss or damage of any kind by reason of their *of* releasing their claim to the said bonds of the American File Company, and to hold the said estates harmless for the transfer and release of said bonds to the defendants.

And your orators admit that the American File Company in Rhode Island never complied with the provisions of chapter 142 of the general statutes "of manufacturing corporations," so as to exempt the stockholders thereof from their joint and several liability for the debt of said company.

And your orators further represent that the said Garrett and Sons, at the March term, 1876, of this honorable court, obtained a judgment against the said American File Company, upon the bonds so held by them for the sum of $132,611.43, debt or damages and $51.35 cost of execution.

And the said Garrett and Sons now claim the right to levy the execution issued on said judgment upon the private property of your orators for the purpose of collecting the aforesaid judgment out of the private property and estates of your orators, and have threatened so to levy said executoin for the purpose aforesaid.

All which right your orators deny, and claim and insist that the distribution of said bonds among the stockholders of the company as hereinbefore mentioned, and the assumption by and payment of an equal amount of the debts of the company by the respective stockholders was a just and equitable apportionment and payment by the several stockholders of the debts of the company as between themselves; that no one of the stockholders so taking said bonds as aforesaid could have any right to pursue his costockholders on their estates on any of the bonds so taken and held by him to compel payment of the principal or interest thereof.

And your orators further claim and insist that no purchaser of said bonds could acquire any other or greater right as against the stockholders of said company, or their estates, than those subsisting between the stockholders themselves; that no stockholder holding such bonds could give or convey by transferring or assigning said bonds to the assignee or transferee any right to enforce said bonds against the stockholders of the company or their estates, but only the right to enforce the same against the corporation and its property.

And your orators further represent and aver that at the time when the said defendants took and received the bonds upon which said judgment was recovered, they had actual notice of all the circumstances under which

112 said bonds were issued to the stockholders, and of all and singular the rights and equities subsisting between the stockholders of the company in relation thereto, and that the defendants stand on no better position and have no other or better rights than the said Chapman, the said Kirkland, Chase & Co., or the said assignees in bankruptcy could or would have had against their costockholders in said company.

And your orators further claim and insist that if the said defendants should be permitted to enforce and collect said judgment from your orators as stockholders in said company, the said Chapman, Kirkland, Chase and Co., and the assigned estates would be bound to respond to your orators for their just proportion thereof as costockholders with your orators, and also for a just proportion of the remaining bonds taken by other stockholders, your orators, which said proportion would equal the whole amount of the judgment herein. And that having so responded, the said Garrett and Sons would under their agreement and guaranty aforesaid with said assignees be obliged to indemnify the said Chapman, Kirkland, Chase & Co., and the assigned estates. That such circuity of action should be restrained and prevented by this honorable court. And that in equity and of right the said guaranty of said Garrett and Sons inures to the benefit of your orators, and that said Garrett and Sons have assented to the release and discharge of said Kirkland, Chase & Co., and said Chapman, thereby the said Garrett & Sons have discharged your orators from any liability if any such existed by reason of said bonds. And your orators had hoped that the defendants would have acknowledged the rights and equities of your orators in the premises and would have abandoned any claim to enforce said judgment against your orators individually, or any right to levy the execution issued thereon upon the private property and estates of your orators.

But now so it is, may it please your honors, the said defendants acting in concert with each other refuse to acknowledge the rights and equities of your orators in the premises, and pretend that they have the right by virtue of the statute aforesaid to levy said execution as issued on the judgment aforesaid upon private property of your orators, notwithstanding the rights and equities as orators aforesaid, and declare their intention so to do.

All which pretences, claims, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable:

To the end thereof that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full,

113 true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, may it please your honors to grant unto your orators its most gracious writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said defendants to perpetually restrain and enjoin them from levying the aforesaid execution upon the property and estates of your orators or either of them:

And also a writ of subpœna to be directed to the defendants thereof, commanding them and every of them, at a certain day and under a certain penalty therein to be specified, personally to appear before this honorable court, and then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree thereon as to your honors as shall seem meet, and that your orators may have such other and further relief in the premises as the nature of this case may require and to your honors shall seem meet.

And your orators will ever pray.

W. F. SAYLES.
NAHUM BATES.
LEWIS FAIRBROTHER.
ROBERT C. WILCOX.
FREDERIC C. SAYLES.
DEBBIE C. SAYLES.
ALVIN F. JENCKS.
JOHN R. FALES.
FREDERICK BATES.
LOUISE A. THORNTON.
WM. S. SLATER.
JOHN R. BARTLETT.
HORATIO ROGERS, *Trustee of the estate of J. Y. Smith, deceased.*
ED. P. TAFT.
CYRUS TAFT.
HENRY A. BARTLETT.
WM. RUSSELL.
CHAS. A. NICHOLS.
SAM'L W. FOSTER.
JOS. E. COLE.
STEPHEN A. JENKS.
JAMES WHITTLE.
ANNE WILCOX.
CHAS. F. MASON, E. PHILIP MASON, and ARTHUR L. MASON, *Trustees of estate of Earl P. Mason, deceased, by* CHAS. HART, *their Solicitor.*

STATE OF RHODE ISLAND, &C.,
Providence, ss:

At Providence, in said county, on the 9th day of November, A. D. 1876, personally appeared W. F. Sayles, and made oath that the statements contained in the foregoing bill in equity by him signed, so far as the same are *are* made as of his own knowledge, are true, and so far as they are made upon information and belief he verily believes they are true.

Before me.

JOHN C. PEGRAM,
Notary Public.

Fee of notary paid by A. Payne, esq., 50 cents.

[L. S.] J. C. PEGRAM, *N. P.*

114 (File mark on bill:) Bill in equity, 1415. Wm. F. Sayles et al. vs. Robert Garrett & Sons. C. Hart & A. Payne, solicitors for compl'ts. Filed 36th day O. T., '76. Subpœna issued re'ble forthwith 115th day cont'd go. 1877, M. T. 86th day cont'd. 1877, O. T. 110th day decree on file removing cause to U. S. circuit court.

(File mark on answer:) Equity, 1415. Wm. F. Sayles et al. vs. Robert Garrett & Sons. Defendants' answer, filed 56th day M. T., 1877. C. B., c'k.

Answer.

To the honorable the judges of the supreme court of Rhode Island:

The joint and several answer of John W. Garrett, Robert Garrett, and T. Harrison Garrett, copartners, doing business in the city of Baltimore, in the State of Maryland, under the firm name of Robert Garrett & Sons,

to the bill of complaint of Wm. F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederick C. Sayles, in right of himself and in right of his wife, Debbie C. Sayles, Alvin F. Jenks, John R. Fales, Frederick Bates, and Louise Thornton, widow, all of Pawtucket, in the State of Rhode Island; William S. Slater, John R. Bartlett, and Horatio Rogers, trustee of the estate of James Y. Smith, deceased, Edward P. Taft, Cyrus Taft, Henry A. Bartlett, William Russell, Samuel W. Foster, and Charles F. Mason, Earl Philip Mason and Arthur L. Mason, trustees of the estate of Earl P. Mason, deceased, all of Providence, in said State; Joseph E. Cole, of Woonsocket, in said State; Stephen A. Jenks and James Whittle, both of Lincoln, in said State; and Anne Wilcox, of Fall River, in the State of Massachusetts.

These respondents, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be taken or had to the many errors, uncertainties, and imperfections to the said bill contained, for answer thereto, or to so much thereof as these respondents are advised it is material or necessary for them to make answer to, answering, say:

1st. They admit that they are copartners doing business in
115 Baltimore, Maryland, under the firm name of Robert Garrett & Sons, and that they at the March term of this court, 1876, obtained a judgment for the sum of one hundred and thirty-two thousand six hundred and eleven dollars and forty-three cents ($132,611.43) as damages, and for the sum of fifty-one dollars and thirty-five cents ($51.35) costs, against the said American File Company upon certain bonds of that company held by these respondents, and that they now claim the right to levy the execution to be issued upon that judgment upon the private property of the complainants, who at the time of the execution and issuing of said bonds were, and ever since have been, and now are, stockholders in said company, because said company has not complied with the provisions of chapter 128 of the revised statutes, and of chapter 142 of the general statutes relating to manufacturing corporations, so as to exempt the stockholders of said American File Company from their joint and several liability for the debts and obligations of said company, and whereby the complain'ts became and are jointly and severally liable for the debts of said company represented by said bonds.

2d. These respondents say that they have no knowledge of the truth or otherwise of the allegations of the bill, as to the mode of forming said company, and the transfer thereto by the file company of Baltimore, of certain property and patent rights belonging to said Baltimore company, or the stockholders thereof, and these respondents therefore neither admit nor deny the same, but should it become necessary or pertinent to the issues in this suit, will demand full proof of the allegations so made.

3d. These respondents admit that Allan A. Chapman, named in the bill of complaint, was the owner or holder of certain shares of the stock of said American File Company; the number of such shares these respondents do not know, but they expressly deny that they at the time of receiving the bonds of said company, as hereinafter fully stated, had any knowledge, information, or notice whatever that said Chapman was the owner of any shares of stock in said company, or that he held any other relation to said company than that of a holder of its bonds.

4th. These respondents have no knowledge as to whether said file company carried on its business with great loss from the time of beginning its operations at Pawtucket up to the year 1870, and therefore deny said allegation, and call for proof of the same; nor have these respondents any knowledge as to whether said file company had in the beginning of the year 1870 a large outstanding indebtedness represented by promissory notes, endorsed by said Chapman and other stockholders, and therefore deny the same. And these respondents further deny that said alleged promissory notes were in pursuance of agreement endorsed and negotiated by the stockholders in proportion to the stock held by them. These respondents have no information or knowledge of any such agreement as is set forth in the bill of complaint, and they therefore deny
116 the same, insisting, however, that whether there was or was not any such arrangement among the stockholders, it can in no wise affect the rights of these respondents as holders for value without notice of the bonds of said company as hereinafter stated.

These respondents further say that they have no knowledge of the various plans proposed and discussed in the year 1870 among the stockholders of said file company for paying the debts of said company, but these respondents deny that there ever was any agreement among the stockholders of said American File Company to contribute towards the payment of the debts of the company an amount equal to the stock held by them respectively and to waive in payment of such advances the mortgage bonds of said company equal in amount to the sums so advanced. These respondents deny that the mortgage bonds aforesaid were ever so issued to the several stockholders in proportion to the amount of stock held by them, but these respondents will further insist that whether there was such an agreement among the stockholders to receive the said bonds in the proportions aforesaid or not, or whether the said bonds were so received by said stockholders in said proportions or not, these facts cannot in any way affect the rights of these respondents, who became valid holders of said bonds in the manner hereinafter stated. These respondents expressly deny that at any time they had any knowledge whatever of any of the alleged agreements among the stockholders of said company whereby the said stockholders were to make advances to said company, and take mortgage bonds therefor, in proportion to the stock held by them respectively, or whereby said stockholders were to indorse and negotiate promissory notes of said company in like proportion as aforesaid, nor did these respondents at the time they received said bonds, as hereinafter stated, have any knowledge of any such alleged agreements among said stockholders, nor indeed did they know at that time that said Allan A. Chapman was a stockholder of said company.

These respondents do not know the amount of mortgage bonds issued by said company, nor the exact dates at which the same were issued, but presume the amounts and dates as stated in the bill of complaint are correct, but as to the second issue of bonds in July, 1871, amounting to ninety-six thousand dollars ($96,000), being unauthorized by the stockholders, these respondents say they have no knowledge on that point, but they further say that the validity of said bonds, as a debt and claim against said file company has been recognized by the stockholders of said company. That said stockholders knew of said issue of bonds, as clearly appears from the allegations of the bill itself, and the validity of the same

as a claim and debt against said company has been authori'tively established by the judgment in favor of these respondents, rendered in this court at the date above mentioned.

These respondents having fully answered all the allegations of the bill of complaint in regard to the alleged agreements among the stockholders of said file company, but insisting, however, that said alleged ar-
117 rangements can in no way affect the rights of these respondents, now proceed to state the facts in regard to the ownership of said bonds by these respondents.

The firm of Kirkland, Chase & Co. were, in the year 1872, and for many years prior thereto, merchants in the city of Baltimore, doing a large importing business. Said firm was composed of Alexander Kirkland, Daniel Chase, Allan A. Chapman, and Robert R. Kirkland, and the said Allan A. Chapman managed the financial affairs of said firm. These respondents are bankers in the city of Baltimore, and their said firm has had large dealings with said firm of Kirkland, Chase & Co. for a period of over thirty years, making advances to them on collaterals from time to time, which said collaterals were held as security, under agreement, for the specific transactions. And they also had a lien as bankers, and by virtue of said agreement on such collaterals as were in their hands for the general balance due them by said firm of Kirkland, Chase & Co. In the course of the dealings between these respondents and said firm, the securities so hypothecated would be changed from time to time, and others substituted.

On the 2d day of May, 1872, these respondents, as bankers, advanced to said firm of Kirkland, Chase & Co. the sum of fifty thousand dollars, and received as security therefor certain promissory notes amounting to fifty-one thousand dollars. At the time of said advance said firm were largely indebted to these respondents for other advances of a like character. And on the 28th day of May, 1872, the said notes were withdrawn by said Allan A. Chapman, acting for and in behalf of said firm of Kirkland, Chase & Co., and a certain cargo of sugar, to wit, that of a vessel called the Shiloh, which said cargo, amounting to 470 hhds., and 176 boxes of sugar, was pledged as collateral security for said loan, and on the 30th day of May, 1872, the said cargo was withdrawn, and the bonds of the American File Company were substituted by said Kirkland, Chase & Co. in the place of said cargo and as collateral security for said specific loan, and also as under the existing agreement between the said firm of Kirkland, Chase & Co. and these respondents, subject to the lien of these respondents for the general balance. Said bonds were of the numbers and denominations as follows:

No.	31 to 40	—10	bonds of	$100	each	$1,000
	45 to 49	— 5	" "	100	"	500
	60 to 89	—30	" "	500	"	15,000
	105 to 106	— 2	" "	500	"	1,000
	109 to 128	—20	" "	500	"	10,000
	171 to 190	—20	" "	1,000	"	20,000
	217 to 232	—16	" "	1,000	"	16,000
	233 to 250	—18	" "	1,000	"	18,000
						$81,500

118 Which were the same on which said judgment was obtained. Said bonds were hypothecated to these respondents as being the property of the said firm of Kirkland, Chase & Co., and with no intimation that the said Allan A. Chapman, who made successive hypothecations, or that said firm had any interest in said file company as stockholders, or bore to said company any other relation than that of holders of its bonds. These respondents also, further answering, say that said bonds were held by them with full and express authority given by said firm of Kirkland, Chase & Co., by virtue of said agreement and arrangement and their relation as bankers, to collect the principal and interest of said bonds, and to apply the same to the liquidation of said specific loan of $50,000 above mentioned, and any excess to apply to the payment of the general balance due by said firm to these respondents from other transactions. These respondents say that said loan of $50,000 has never been paid them by said firm of Kirkland, Chase & Co., but that on October 9th, 1872, the said firm of Kirkland, Chase & Co. were declared bankrupt, as was also the said Allan A. Chapman, at which time the said firm owed unto these respondents the sum of $451,000 and upwards, so that even after deducting the entire amount of the judgment recovered against the said file company there would still be a large balance due these respondents by said firm.

These respondents also deny that they received the said bonds from the said Allan A. Chapman after the failure of the said firm of Kirkland, Chase & Co., as charged in the bill of complaint, or that they held them without any consideration.

These respondents state that the assignees of said Kirkland, Chase & Co. did claim to have an interest in said bonds, but said interest was never recognized in any manner by these respondents, but, on the contrary, was always denied by them. They also state that they are ignorant of the negotiations alleged in the bill of complaint as having taken place between the stockholders and said assignees, except as referred to in the hereinafter-mentioned agreement between these respondents and said assignees; but they state that certain stockholders who are parties to this bill of complaint, through Charles A. Nichols, the president of said American File Company, did also make an offer to these respondents to pay them the sum of fifty cents in cash in every dollar for the surrender of said bonds, which said offer was declined by these respondents.

These respondents further deny that said negotiations were invited by said assignees, but state that the same were proposed by said Nichols, acting for certain of the stockholders who are parties to this bill of complaint. They also deny that they became purchasers in any manner by virtue of the agreement between them and the said assignees, and they now file a true copy of said agreement between these respondents and said assignees, marked "Respondents' Exhibit, No. 1," to which they refer as

119 stating all the terms and conditions of said settlement, which was an adjustment of a variety of conflicting interest between them. And these respondents insist that by said settlement with said assignees they acquired no title to said bonds other than they already possessed, but a mere recognition of the title which they already had, and which they had always asserted, and that thereby they became in no manner purchasers of said bonds from said assignees, or derived any title to the same from them.

These respondents deny that the bonds issued by said file company

were distributed among the stockholders, or that the apportionment mentioned in the bill was made, or that said apportionment and distribution, if made at all, was a payment by the said stockholders of the debts of the company as between themselves, and they further deny that if any of the said stockholders had taken said bonds in the manner alleged that he or they would be precluded by reason of his relation as stockholder from collecting said bonds from the other stockholders.

And these respondents further deny that they as holders of said bonds could not acquire as against said stockholders other and greater rights than an individual stockholder possessing said bonds would have, and they say from the fact that said bonds were coupon bonds, payable to the bearer thereof, and transferable by delivery, that when they took the same in the course of business, for value and before maturity, and in the manner and under the circumstances fully hereinbefore detailed, that they acquired an entire and perfect title to the same, unaffected by the equities, if any, which might have existed between said stockholders and said Allan A. Chapman, especially as they were ignorant, as before stated, of the fact that said Allan A. Chapman was a stockholder in said company, and had no knowledge or notice of the manner or circumstances of the issue of said bonds.

And these respondents further deny that by the enforcement of their judgment against the private estates of the complainants by execution, there would arise any circuity of action between the complainants and these respondents, which should be prevented by a court of equity. And they further refer to the said agreement made on the 18th day of May, 1874, between these respondents and said assignees, hereinbefore mentioned and filed by these respondents, as stating fully the adjustment made between them, and they deny that the said complainants have any interest in or are affected by said agreement, or that there is any privity or contract or estate between the complainants and these respondents, such as would make said agreement, entered into between these respondents and other parties, available unto the said complainants. They further say that the said estate of Kirkland, Chase & Co. has paid as dividends unto the creditors who have proved their claims against the same 18½ per cent.

Further answering, these respondents deny that the said assignees have suffered any loss or damage, or can suffer any loss or damage, for
120 which these respondents can be held accountable to them under said agreement, and they further say that it is not true, as alleged in said bill of complaint, that they have assented to the release and discharge of said Kirkland, Chase & Co. or said Allan A. Chapman under said bankruptcy proceedings, but on the contrary they never have signed said releases or discharges or assented thereto.

And these defendants insist upon each and all the matters aforesaid, as though the same had been specially pleaded in bar or they had demurred to complainants' bill.

These respondents believe thatthey have fully and sufficiently answered the averments of the said bill of complaint, although they are advised by their counsel, as they now aver and will claim, that the said bill is without force or effect in any particular in law, and furnishes on its face no ground of jurisdiction in equity or for the interference of this court by injunction or otherwise.

The respondents respectfully insist that in obtaining said judgment on

said bonds, and enforcing the same by execution against the private estates of said stockholders who are personally liable for the debts of said company under the laws of the State of Rhode Island, they have proceeded in strict accordance with their rights as bona fide holders for value of said bonds, without any knowledge or notice of any equities, if such there be, between the said complainants and the said Allan A. Chapman, as a stockholder in said company, or the said Kirkland, Chase & Co., from whom said bonds were taken.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this that there is any other matter, cause, or thing, in the said complainants' bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants, or any of them; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and under the statute in such cases provided these defendants pray the decree of this honorable court declaring and adjudging said complainants as stockholders and members of said corporation aforesaid, to be jointly and severally liable to these defendants for the debts of said American File Company held by these defendants as aforesaid, and now represented by their judgment aforesaid, and that these defendants are entitled to have and recover the same of said complainants, and each of them accordingly. And that said complainants, and each of them, may be decreed to pay the same with interest and costs thereon to these defendants, and for such other and further relief in the premises as these defendants would or could be entitled to against
121 said complainants upon a cross-bill filed by these defendants against them, and for their costs in this behalf most wrongfully sustained.

ROBERT GARRETT,
JOHN W. GARRETT,
T. HARRISON GARRETT,
By their solicitor, JAMES TILLINGHAST.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this ninth day of May, A. D. 1877, before the subscriber, a commissioner of deeds for the State of Rhode Island, duly appointed and commissioned by the governor of said State, and authorized and empowered to take acknowledgments and affidavits within the city of Baltimore, to be used in said State, personally appeared John W. Garrett, Robert Garrett, and T. Harrison Garrett, to me personally known, who made oath in due form of law that the matters and things stated in the foregoing answer are true as therein stated, to the best of their knowledge, information, and belief, and that the matters therein relied upon by way of plea or demurrer are true in point of fact, and are not interposed by way of delay.

In testimony whereof I have hereunto set my hand and affixed my official seal on the day and in the year first above written.

[L. S.] MURRAY HANSON,
A Commissioner for Rhode Island,
residing in Baltimore City, Maryland.

EXHIBITS.

No. 1.

IN THE MATTER OF KIRKLAND, CHASE & CO., bankrupts.

In the district court of the United States, Maryland district.

It is hereby agreed between the subscribers (subject to the sanction and approval of said court sitting in bankruptcy) that all controversies between them, respectively, growing out of the matter of Kirkland, Chase & Co., bankrupts, shall be settled as follows:

First. The undersigned, assignees of Kirkland, Chace & Co., do and will assign and relinquish to Robert Garrett & Sons all claim to collaterals of every nature, or the proceeds thereof, held by said Robert
122 Garrett & Sons for the debt of said Kirkland, Chace & Co. to said Robert Garrett & Sons.

Second. Upon the approval of this agreement by said court, said assignees agree to pay Messrs. Robert Garrett & Sons the sum of five thousand dollars.

Third. Upon the approval of this agreement by said court, said assignees agree to pay the Central National Bank of Baltimore the sum of six thousand dollars, with interest at the rate of three per cent., which is to be in full satisfaction of the claim of said bank against said firm of Kirkland, Chase & Co.

Fourth. Said assignees are to do all in their power to facilitate Messrs. Robert Garrett & Sons in the recovery of all moneys and property now held adversely to the claim of Messrs. Robert Garrett & Sons by the assignees of the firms of Lazear Bros. and I. C. Budges and Company, with which the firm of Kirkland, Chase and Company had any connection, the assignees of Kirkland, Chase and Company hereby relinquishing and assigning all claim thereto to Messrs. Robert Garrett & Sons.

Fifth. Said assignees are to confirm and complete, so far as they may be able, the title of Messrs. Robert Garrett & Sons to all collaterals and property so as aforesaid held by them, and by this agreement relinquish and assign to said Robert Garrett & Sons the same.

Sixth. In consideration of the foregoing acts on the part of said assignees, said Robert Garrett & Sons hereby release and abandon all rights and claims to dividends already declared and hereafter to be declared in the estate of Kirkland, Chase and Company by said assignees or their successors; and said Robert Garrett & Sons lik'wise further agree that whereas said assignees have been offered the sum of fifty cents in the dollar for certain bonds of the American File Company now held by Messrs. Robert Garrett & Sons (which were received as collaterals from Messrs. Kirkland, Chase and Company) and an indemnification against loss or damage of any kind as holders of certain stock of said American File Company, as assignees of A. A. Chapman and Kirkland, Chase and Company, said Robert Garrett & Sons hereby agree to indemnify the said assignees against loss or damage of any kind as holders of the stock aforesaid, and in consideration of said acts of said assignees said Robert Garrett & Sons

do also hereby agree to indemnify the said assignees and said estate of Kirkland, Chase and Company and the estate of A. A. Chapman against loss or damage of any kind for releasing their claim to the said bonds of the American File Company now held by Messrs. Robert Garrett & Sons, and agree to hold said assignees and said estates harmless for said transfer and release.

Witness our hands set hereunto the 18th day of May, 1874.

(Signed) WALTER B. BROOKS,
RANDOLPH BARTON,
Assignees in Bankruptcy of Kirkland, Chase & Co. and A. A. Chapman.
R. GARRETT & SONS.
BROWN & BRUNE,
For Assignees.
C. J. M. GROINER,
For R. Garrett & Sons.

123 *Replication.*

Supreme court of Rhode Island, October term, A. D. 1877.

WM. F. SAYLES ET AL. *vs.* ROBERT GARRETT AND SONS. } Equity. 1415.

The complainants' replication to defendants' answer.

These repliants, saving and reserving unto themselves all and all manner of benefit of exception to the manifold insufficiences of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the laws to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

By their solicitors—

A. & A. D. PAYNE,
CHARLES HART.

Filed Feb'y 4, 1878. H. A. A., cl'k.

(File mark to petition:) Equity, 1415. Petition for removal to U. S. circuit co. Filed Feb'y 5th, 1878. C. Blake, clerk.

Petition for removal.

To the honorable supreme court, October term, A. D. 1877:

PROVIDENCE, *sc:*

WILLIAM F. SAYLES ET AL. *vs.* ROBERT GARRETT & SONS. } In equity. No. 1415.

Your petitioners, the respondents in said cause, respectfully show to

your honors that the amount in dispute in the above entitled suit exceeds, exclusive of costs, the sum of or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioners were at the time of the commencement of this suit, and still are, citizens of the State of Maryland, and that all the complainants, except Annie Wilcox, then were and still are citizens of the State of Rhode Island; and that said Annie Wilcox then was and still is a citizen of the State of Massachusetts.

124 And your petitioners offer herewith a bond with good and sufficient surety for his entering in the circuit court of the United States in and for the district of Rhode Island, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto. And they pray this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into the said circuit court of the United States in and for said district of Rhode Island, and they will ever pray.

ROBERT GARRETT & SONS,
By their attorney, JAMES TILLINGHAST.

Bond.

(File mark bond:) Bond on removal. Equity No. 1415. Filed February 5, 1878. C. B., clerk.

Know all men by these presents that we, John W. Garrett, Robert Garrett, and T. Harrison Garrett, copartners, doing business under the name of Robert Garrett & Sons, as principals, and Frederic E. Anthony, of Providence, as surety, are held and firmly bound unto William F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederick C. Sayles, in right of himself and in right of his wife, Debbie C. Sayles, Alvin F. Jenks, John R. Fales, Frederick Bates, and Louise A. Thornton, widow, William S. Slater, John R. Bartlett; Horatio Rogers, trustee of the estate of James Y. Smith, deceased; Edward P. Taft, Cyrus Taft, Henry H. Bartlett, William Russell, Samuel W. Foster and Charles F. Mason; Earl Philip Mason and Arthur L. Mason, trustees of the estate of Earl P. Mason, deceased; Joseph E. Cole, Stephen A. Jenks, James Whittles, and Annie Wilcox, in the penal sum of ———— five hundred dollars, the payment whereof well and truly to be made unto the said William F. Sayles, Nahum Bates, Lewis Fairbrother, Robert C. Wilcox, Frederic C. Sayles, in right of himself and in right of his wife, Debbie C. Sayles, Alvin F. Jenks, John R. Fales, Frederick Bates, and Louise A. Thornton, widow, William S. Slater, John R. Bartlett; Horatio Rogers, trustee of the estate of James Y. Smith, deceased; Edward P. Taft, Cyrus Taft, Henry A. Bartlett, William Russell, Samuel W. Foster and Charles F. Mason; Earl Philip Mason and Arthur L. Mason, trustees of the estate of Earl P. Mason, deceased; Joseph E. Cole,

125 Stephen A. Jenks, and James Whittles, and Annie Wilcox, their heirs and executors, administrators and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions, the said John W. Garrett, Robert Garrett, and T. Harrison Garrett, copartners, doing business in Baltimore City and State of Maryland, under the name of "Robert Garrett & Sons," having petitioned the supreme court of Rhode Island for the removal of a certain cause therein pending, wherein the above-named William F. Sayles and others are complainants, and the said Robert Garrett & Sons are defendants, to the circuit court of the United States in and for the district of Rhode Island:

Now, if the said John W. Garrett, Robert Garrett, and T. Harrison Garrett, trading as Robert Garrett & Sons, as aforesaid, your petitioners, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this fourth day of February, 1878.

JOHN W. GARRETT. [SEAL.]

Witness:

ANDREW ANDERSON.

ROBERT GARRETT. [SEAL.]

C. NITZE.

T. HARRISON GARRETT. [SEAL.]

C. NITZE.

F. E. ANTHONY. [SEAL.]

WM. R. TILLINGHAST.

Decree for removal.

(Indorsed:) 1415. Decree for removal. Filed 110th day O. T., 1877. C. B., clerk.

Supreme court, October term, 1877.

PROVIDENCE, *sc:*

WILLIAM F. SAYLES ET AL. *vs.* ROBERT GARRETT & SONS. } In equity. No. 1415.

This cause came on to be heard at the above term upon the defendants' petition that the same be removed into the circuit court of the United States in and for the district of Rhode Island, and counsel for the respective parties were heard thereon, and it appearing that said petition was filed in proper time, and accompanied by a sufficient and satisfactory
126 bond, and that the act of Congress in such cases provided has in all respects been complied with, it is now ordered, adjudged, and decreed that said petition and bond be accepted, and that this court proceed no further in said suit, and that the same be removed out of this court into the said circuit court of the United States, according to the act of Congress in such cases provided.

Entered as the decree of court, 110th day O. T., 1877 (February 14, 1878).

By order.

CHARLES BLAKE, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, sc:
CLERK'S OFFICE, SUPREME COURT.

I, Charles Blake, clerk of the supreme court of said State, within and for the county of Providence, do hereby certify the foregoing to be a true copy of the case in equity, Wm. F. Sayles et al. vs. Robert Garrett & Sons, which said case was entered in said supreme court on the 36th day of the term thereof, holden in Providence, within and for said county, on the first Monday of October, A. D. 1876, and thence continued from term to term unto the October term, A. D. 1877, and upon the 110th day thereof the same was, upon petition of the defendant, ordered by said court to be removed and certified to the circuit court of the United States for the district of Rhode Island. All which appears of record in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said supreme court this 25th day of February, A. D. 1878, at Providence, in said county and State.

[SEAL.] CHARLES BLAKE, *Clerk.*

127 *Agreement of counsel.*

ROBERT GARRETT & SONS
vs.
THE AMERICAN FILE COMPANY, WILLIAM F. SAYLES, & others.

It is hereby agreed between the counsel for the respective parties that the depositions taken in the above-entitled cause may be used in the case of William F. Sayles & others v. Robert Garrett & Sons, now pending in the circuit court, and said depositions may be used to the same effect in said cause as if regularly taken therein.

JOHN K. COWIN,
E. D. J. CROSS,
For Rob't Garrett & Sons.
ARTHUR D. PAYNE,
For American File Co. & Wm. F. Sayles et al.

128 And said cause came on to be heard at the November term of said court, A. D. 1879, upon the pleadings and proofs filed therein before judges, John Lowell, judge of the circuit court of the United States for the first circuit, and John P. Knowles, judge of the district court of the United States for said district of Rhode Island, and was argued by the counsel for the respective parties.

And on the first day of March, A. D. 1880, an opinion was delivered therein, ordering a decree to be entered dismissing said bill. (See opinion in Garrett et al. v. American File Co.)

And said cause was continued to the present June term, A. D. 1880, when the following decree was entered.

129 *Final decree.—Entered July 6th,* 1880.

This cause came on to be heard at the last term upon bill, answer, and

proof, and was argued by counsel, and thereupon upon consideration thereof, it was at this term ordered, adjudged, and decreed:

That said complainants' said bill be dismissed, and that said defendants have and recover of said complainants their costs in the cause in the state court, including the costs of the copy of the case filed here, to be taxed by clerk according to the State statute.

Entered as the decree of this court this 6th day of July, A. D. 1880.

HENRY PITMAN,
Clerk Circuit Court.

130 From which decree the complainants, on the same day, in open court, claimed an appeal to the Supreme Court of the United States.

And on the 16th day of September, 1880, the following bond was filed:

Appeal bond.

Know all men by these presents that I, William F. Sayles, of Pawtucket, in the State of Rhode Island, as principal, and Charles O. Read, of Pawtucket, in said State of Rhode Island, as surety, are held and firmly bound unto John W. Garrett, Robert Garrett, and Thomas Hansen Garrett, all of Baltimore, in the State of Maryland, copartners in businesss, under the name and style of Robert Garrett & Sons, in the full and just sum
131 of one thousand dollars ($1,000.00) to which payment well and truly to be made, William F. Sayles binds himself, his heirs, executors, and administrators, jointly and severally, with the said Charles O. Read, hereinbefore named as surety in the bond, who binds himself, his heirs, executors, and administrators, jointly and severally, with the said William F. Sayles, hereinbefore named as principal in this bond, his heirs, executors, and administrators, firmly by these presents. Sealed with the seals of the said Wm. F. Sayles and the said Charles O. Read, and dated the 18th day of September, A. D. 1880.

Whereas, at a circuit court of the United States, holden at Providence, within and for the district of Rhode Island, by adjournment on the
132 sixth day of July, A. D. 1880, in a suit in equity depending in said court, wherein William F. Sayles and others were complainants, and Robert Garrett & Sons, respondents, a decree was rendered against said William F. Sayles and others, dismissing the bill of complaint in said cause, for the sum of one hundred and eight dollars and thirty-five cents ($108.35) respondents' costs of suit, and said William F. Sayles and others have appealed in open court from said decree to the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the second Monday in October next ensuing the date hereof.

Now, the condition of the above obligation is such that if the said William F. Sayles & others shall prosecute said appeal with effect, and
133 answer all costs if they fail to make their plea good, then the above obligation to be void else to be and remain in full force and effect.

WILLIAM F. SAYLES. [L. S.]
CHAS. O. READ. [L. S.]

In presence of—
LYSANDER B. CURTIS.

134 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Sept. 20th, 1880.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing 27 pages contain a true transcript of the record, Wm. F. Sayles & others v. Rob't Garrett & Sons, and all of the proceedings therein.

In testimony whereof I have hereunto set the seal of this court and my hand on the day and year above written.

[SEAL.] HENRY PITMAN, *Clerk.*

(Indorsement on cover:) No. 110. The American File Company, William F. Sayles, et al., appellants, vs. John W. Garrett, Robert Garrett, and Thomas Harrison Garrett, copartners as Robert Garrett & Sons; and No. 111. William F. Sayles et al., appellants, vs. John W. Garrett, Robert Garrett, & Thomas Harrison Garrett, copartners as Robert Garrett & Sons. Rhode Island C. C. U. S. Filed 13th October, 1880.

110-288

FILED
JAN 11 1884
JAMES H. McKENNEY, CLERK.

BRIEF FOR AMERICAN FILE CO. et al., APPELLANTS, AND FOR WILLIAM F. SAYLES et al., APPELLANTS.

Supreme Court of the United States,

OCTOBER TERM, 1883.

No. 110.

THE AMERICAN FILE COMPANY, WILLIAM F. SAYLES, ET AL., APPELLANTS,

vs.

JOHN W. GARRETT, ROBERT GARRETT, AND THOMAS HARRISON GARRETT, COPARTNERS AS ROBERT GARRETT & SONS.

No. 111.

WILLIAM F. SAYLES ET AL., APPELLANTS,

vs.

JOHN W. GARRETT, ROBERT GARRETT, AND THOMAS HARRISON GARRETT, COPARTNERS AS ROBERT GARRETT & SONS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 110.

THE AMERICAN FILE COMPANY, WILLIAM F. SAYLES, ET AL., APPELLANTS,

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BRIEF FOR THE APPELLANTS.

HISTORY OF THE LITIGATION.

AT the March Term, 1876, of the Supreme Court of the State of Rhode Island, held in the County of Providence, Robert Garrett & Sons obtained a judgment against the American File Company, upon certain bonds of the said company, in the sum of $132,611.43, debt or damages, and $51.35, costs.

At the October Term of said court, William F. Sayles, *et al.*, filed their bill of complaint against Robert Garrett & Sons, to restrain the levy of execution upon the said judgment upon the private property of the stockholders of the American File Company, and for other purposes.

Supreme Court of the United States.

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At the October Term of said court, William F. Sayles, *et al.*, filed their bill of complaint against Robert Garrett & Sons, to restrain the levy of execution upon the said judgment upon the private property of the stockholders of the American File Company, and for other purposes.

At the March Term, A. D. 1877, of said court, Robert Garrett & Sons filed their answer to the said bill of complaint.

At the October Term, 1877, of said court, the complainants filed a general replication to the said answer.

And at the same term the said cause, upon the petition of the respondents, was removed into this court by an order of the Supreme Court of the State of Rhode Island.

On the eighth day of April, 1878, Robert Garrett & Sons filed their cross-bill in this court against the American File Company and others.

On the thirteenth day of November, 1878, Wm. F. Sayles and others, stockholders in the American File Company, filed their answer to the said cross-bill.

On the fifteenth day of November, 1878, Robert Garrett & Sons filed their replication to said answer.

Testimony was taken under a stipulation that the same should be used, both in the case made by the original bill, and in the case made by the cross-bill.

Abstract of the Original Bill and Answer.

The complainants aver that, prior to 1862, Allan A. Chapman and others, under the corporate name of the American File Company, were engaged in the manufacture of files at Baltimore, claiming to be the owners of a patent for a new and useful invention for cutting files by machinery, and in 1862 induced the complainant and others, residents of Rhode Island, to obtain a charter, and organize a company thereunder, under the name of the American File Company, and purchase of the American File Company in Baltimore their property, consisting principally of the patent aforesaid, to carry on in Rhode Island the manufacture of files; and that the charter was obtained, and the company organized.

Chapman and his Baltimore associates, as consideration for the conveyance of the property aforesaid, received in the aggregate nearly one-half of the capital stock of the company in Rhode Island.

The Rhode Island Company commenced business, and for several years continued the same with great loss, the said Chapman and the other Baltimore stockholders, during said time, being directors and active managers of the company.

In 1870 there was outstanding a large indebtedness of said company, represented by their promissory notes indorsed by Chapman and other stockholders, pursuant to an agreement, substantially in proportion to their stock.

It having been proposed that the stockholders should contribute in proportion to their stock, to pay the debts of the company, and receive therefor the bonds of the company, secured by a mortgage upon its property, a paper was signed by the Rhode Island stockholders and by said Chapman, for himself and the other Baltimore stockholders, agreeing to take their respective portions of such bonds.

The agreement was executed, and the bonds issued and distributed pursuant thereto. The bonds were all of the same tenor, payable in five years with interest at ten per cent., semi-annually. Chapman

continued director and manager of the company until his failure in 1872.

In September, 1872, Kirkland, Chase & Co., of which Chapman was a member, failed, and the firm and each member were adjudicated bankrupts, and made assignments.

After such failure Chapman sent to Garrett & Sons, without consideration or previous notice, all the bonds of the American File Company, held by him or in his possession, and the said Garrett & Sons claimed to hold the same as security for a specific loan of $50,000, before that time made to Kirkland, Chase & Co., and not otherwise, and the assignees of said firm, and of Chapman, refused to recognize such claim.

Said assignees negotiated with certain of the Rhode Island stockholders for the transfer to them of said bonds, for fifty cents upon the dollar — the Rhode Island stockholders to guarantee Chapman and the assignees against liability for the indebtedness of the American File Company. Pending this negotiation, the said Garrett & Sons effected a general settlement with said assignees, by which the said Garrett & Sons became the purchasers of said bonds from said assignees, and agreed to indemnify them and the estate of said Chapman, and the estate of Kirkland, Chase & Co., against all loss and damage by reason of the transfer of said bonds, and to indemnify the said assignees against loss or damage of any kind, as holders of the stock of the American File Company.

They admit that they never complied with the law so as to exempt themselves from liabilities for the debts of the company, and aver that Garrett & Sons, at the March Term of the Supreme Court obtained a judgment against the American File Company upon said bonds for the sum of $132,611.43 debt and $51.35 costs, and that Garrett & Sons claim the right to levy execution, issued thereon upon the private property of the complainants.

Which right the complainants deny, and claim and insist that the distribution of said bonds among the stockholders of the company, as hereinbefore mentioned, and the assumption by and payment of an equal amount of the debts of the company by the respective stockholders was a just and equitable apportionment and payment by the several stockholders, of the debts of the company as between themselves; that no one of the stockholders so taking said bonds as aforesaid, could have any right to pursue his co-stockholders, or their estates, on any of the bonds so taken and held by him, to compel payment of the principal or interest thereof.

And the complainants further claim and insist that no purchaser of said bonds could acquire any other or greater right as against the stockholders of said company or their estates than those subsisting between the stockholders themselves, that no stockholder holding such bonds could give or convey, by transferring or assigning said bonds to the assignee or transferee, any right to enforce said bonds against the stockholders of the Company or their estates, but only the right to enforce the same against the corporation and its property.

And the complainants further claim that at the time when the

said defendants took and received the bonds upon which said judgment was recovered, they had actual notice of all the circumstances under which said bonds were issued to the stockholders, and of all and singular the rights and equities subsisting between the stockholders of the company in relation thereto, and that the defendants stand on no better position, and have no other or better rights than the said Chapman, or the said assignees in bankruptcy could or would have had against their co-stockholders in said company.

And the complainants further claim and insist that if the said defendants should be permitted to enforce and collect said judgment from the complainants as stockholders in said company, the said Chapman and the assigned estate would be bound to respond to the complainants for their just proportion thereof as co-stockholders with the complainants, and also for a just proportion of the remaining bonds taken by other stockholders, the complainants, which said proportion would equal the whole amount of the judgment herein. And that having so responded, the said Garrett & Sons would, under their agreement and guaranty aforesaid with said assignees, be obliged to indemnify the said Chapman, and the assigned estate. That such circuity of action should be restrained and prevented by this honorable court. And that in equity and of right the said guaranty of said Garrett & Sons inures to the benefit of the complainants, and that said Garrett & Sons have assented to the release and discharge of said Chapman, whereby the said Garrett & Sons have discharged the complainants from any liability, if any such existed by reason of said bonds.

And they pray for an injunction to restrain the defendants from levying execution upon the property and estates of the complainants, and for general relief.

The Answer to the Original Bill.

The defendants admit their copartnership, and that they obtained judgment, and claim the right to levy execution, as alleged in said bill, but deny and require proof of all the other material allegations in the bill in regard to alleged agreements among the stockholders, and insisting that they can in no way affect the rights of the defendants.

They state the facts in regard to their ownership of said bonds as follows, viz.:

On the second day of May, 1872, these respondents, as bankers, advanced to said firm of Kirkland, Chase & Co. the sum of $50,000, and received as security therefor certain promissory notes amounting to $51,000. At the time of said advance, said firm were largely indebted to these respondents for other advances of a like character. And on the twenty-eighth day of May, 1872, the said notes were withdrawn by said Allan A. Chapman, acting for, and in behalf of said firm of Kirkland, Chase & Co., and a certain cargo of sugar, to wit: that of a vessel called the "Shiloh," which said cargo, amounting to 470 hhds. and 176 boxes of sugar, was pledged as collateral security for said loan, and on the thirtieth day of May, 1872, the said cargo was withdrawn, and the bonds of the American File Company were substituted by said Kirkland, Chase & Co., in the place of said cargo,

and as collateral security for said specific loan, and also as under the existing agreement between the said firm of Kirkland, Chase & Co. and these respondents, subject to the lien of these respondents for the general balance. Said bonds were of the numbers and denominations as follows:

No.	31 to 40—10	bonds of	$100	each	$1,000
	45 to 49— 5	" "	100	"	500
	60 to 89—30	" "	500	"	15,000
	105 to 106— 2	" "	500	"	1,000
	109 to 128—20	" "	500	"	10,000
	171 to 190—20	" "	1,000	"	20,000
	217 to 232—16	" "	1,000	"	16,000
	233 to 250—18	" "	1,000	"	18,000
					$81,500

Which were the same on which said judgment was obtained. Said bonds were hypothecated to these respondents, as being the property of the said firm of Kirkland, Chase & Co., and with no intimation that the said Allan A. Chapman, who made said successive hypothecations, or that said firm had any interest in said File Company as stockholders, or bore to said company, any other relation than that of holders of its bonds. These respondents also further answering say, that said bonds were held by them with full and express authority, given by said firm of Kirkland, Chase & Co., by virtue of said agreement and arrangement, and their relation as bankers, to collect the principal and interest of said bonds, and to apply the same to the liquidation of said specific loan of $50,000 above mentioned, and any excess to apply to the payment of the general balance due by said firm to these respondents from other transactions. These respondents say that said loan of $50,000 has never been paid them by said firm of Kirkland, Chase & Co., but that, on Oct. 9, 1872, the said firm of Kirkland, Chase & Co. was declared bankrupt, as was also the said Allan A. Chapman, at which time the said firm owed unto these respondents the sum of $451,000 and upwards, so that even after deducting the entire amount of the judgment recovered against the said File Company, there would still be a large amount due the defendants.

They deny that they received said bonds after the failure of Kirkland, Chase & Co., or without consideration. They aver that they denied the claim of the assignees of Kirkland, Chase & Co. to an interest in those bonds, that they are ignorant of the negotiations between the shareholders and said assignees, except as referred to in an agreement annexed as an exhibit to said answer that certain stockholders, through Chas. A. Nichols, offered to pay them fifty cents on the dollar for the surrender of said bonds, which offer was declined.

They deny that negotiations were invited by the assignees, and aver that they were proposed by said Nichols. They deny that they became purchasers of said bonds, and annex the agreement between themselves and said assignees.

They deny the distribution of said bonds as alleged in said bill,

or, if made, that it was a payment by the stockholders of the debts of said company, as between themselves, or that if any stockholder had taken bonds in the manner alleged in said bill, he would be precluded from collecting said bonds of the other stockholders.

They deny that they could not acquire greater rights than an individual stockholder possessing said bonds would have, and upon the facts, as stated by them, aver a perfect title to the same, unaffected by any equities.

They deny that by the enforcement of their judgment against the private estates of the complainants any circuity of action would arise, or that the complainants have any interest in the agreement annexed to said answer, or that there is any privity of contract between the complainants and the defendants. They aver that the estate of Kirkland, Chase & Co. had paid, as dividends to creditors, 18 1-2 per cent. They deny that said assignees have suffered loss or damage, or that the defendants have assented to the discharge in bankruptcy of Kirkland, Chase & Co. or of Allan A. Chapman. They insist upon all matters as though specially pleaded or raised by demurrer.

They deny all equity in the bill, and claim to be proceeding in strict accordance with their rights, and pray for a decree against the complainants, jointly and severally, for the amount of their claims, and for such other relief as they might have upon a cross-bill, and for costs.

The complainants file a *general replication.*

Abstract of Cross-Bill and Answer.

The complainants aver the joint and several liability of the stockholders for the debts of the company.

They set forth their judgment and aver that it remains in full force.

They set forth the bonds upon which said judgment was obtained, and aver that no part of the principal or interest thereof has been paid.

They aver that the defendants are stockholders, or trustees of the estates of stockholders, and liable to pay said judgment.

And they pray that the defendants, not trustees, may be decreed to be jointly and severally liable, and to pay said judgment, and that the defendants trustees may be decreed to be liable, and to pay said judgment from the estates which they hold in hand, and for general relief.

In answer to the cross-bill, the defendants admit that the American File Company is a manufacturing corporation, and never did file the certificates required by law to exempt the stockholders from liability.

They admit the judgment as alleged in the bill, and that the same is unpaid.

They admit the causes of action upon which such judgment was obtained, being certain bonds as set forth in said bill, and that no part of the principal or interest thereon has been paid.

They deny that they are jointly or undividedly, personally liable, or

as executors, administrators or trustees, for the reasons set forth in their answer.

N. B.— The answer then sets out in defence, the allegations in the original bill filed by these defendants, as complainants in the original bill, or the Supreme Court of Rhode Island, and crave leave to refer to the same as set forth in this brief.

They pray to be dismissed with costs.

The complainants file a general replication.

Only the questions raised by the pleadings in the case of Robert Garrett & Sons *versus* the American File Company, William F. Sayles, *et al.*, are to be considered at this hearing, that is to say, the case which stands as number 110 on the docket of this court, and is the one referred to in the foregoing abstract, for convenience, though not with entire accuracy, as the "*cross-bill.*"

The case which stands as No. 111 on the docket of this court, is the case removed from the state court of Rhode Island to the Circuit Court of the United States for the District of Rhode Island, and it was originally filed to restrain the levy of the execution issued upon the judgment obtained in the action at law hereinbefore referred to.

The bill of complaint in the case, Robert Garrett & Sons *vs.* American File Co., William F. Sayles, *et al.* (No. 110 on the docket of this court), and the answer and replication thereto, raise all the questions that are involved in both the cases. The prayer of the bill is that the defendants therein, now the appellants, be decreed to be liable for, and to pay the judgment referred to. Whatever the result, whether the prayer be granted or denied, the decision in either alternative will settle all the matters in dispute between the parties.

With this understanding the appellants make the following points:

POINT I.

As regards the two general classes of stockholders in the American File Company, the Baltimore stockholders and the Rhode Island stockholders, the indebtedness of that corporation was carried in the form of promissory notes and indorsements by each class substantially in proportion to the amount of the stock owned by each class. This appears by the sworn answer of the appellants (Record page 6), and by the letters of Chapman, who appears to have been the spokesman, and who evidently assumed to be the representative of the Baltimore stockholders (Record pages 35 and 36), and by the letters of Sayles, who in like manner was the spokesman of, and assumed to represent, the Rhode Island stockholders (Record pages 38, 39, 40). And when it was decided that the form in which the indebtedness should be carried should be changed from that of promissory notes and indorsements to that of bonds, the bonds that were issued were delivered and taken up or paid for in precisely the same proportions. It may be true that in Rhode Island, and in Baltimore also, as regards the individual stockholders in each locality, some may have carried notes and received bonds in less number than in proportion to their stock: some may have carried and received more — others none at all. But as regards the general class of Baltimore stockholders, and they are the only ones with whom we have now to deal, they held a certain proportion of the stock of the

American File Company, they carried the same proportion of the indebtedness of the company in the form of notes and indorsements, and when the bonds were issued they took the same proportion of the bonds. That is to say, they took them through their representative, Chapman. If his letter (Record pages 35 and 36) means anything, it means that he understood that such was the case, and that he assumed on himself to represent the stockholders in Baltimore, and to supply their deficiencies if any, and he is estopped, and so are his representatives and any persons who stand in his place estopped, from denying that such was the case — that such was his assumption, and that such was his undertaking.

POINT II.

Chapman did take the bonds in that proportion (Deposition of Sayles, Record page 51), and he took up and returned to the company a corresponding amount of the promissory notes of the company. Where he got the money to take up these notes is a matter foreign to this discussion. If he used the money of his firm, it is to be supposed that he was charged personally with the funds which he took. As a stockholder, speaking for himself and for other stockholders, he agreed to take these bonds; as a stockholder they were delivered to him, for himself and for other stockholders, and as a stockholder he held them, whether for himself alone, or for others, co-stockholders, also is not now important. It cannot now be claimed by him, or by those who stand in his place, in view of his letters already cited, that any one else but he owned them, either individually or as a representative of others, or that he owned or held them otherwise than as a stockholder in the company. Now let us inquire what those bonds represented to him, what was their value to him, and what rights did they carry with them. They represented to him so much of the company's property, real and personal, in actual possession and to be acquired. Their value to him was something or nothing, according as the company's business was good or bad, according as its property could be sold for something or nothing. They carried with them the right to so much of what the company's property would realize, if it were sold and converted into cash. Did they carry with them the right to recover of his co-stockholders any part of their face value? By no means. For if he could recover from them in proportion to their bonds, so could they recover from him in proportion to his bonds. If with one hand he took money from them to pay his bonds, with the other he would have to give them money to pay their bonds. The two actions balanced each other. Neither class of stockholders had any claim on the other.

Our view of this matter may be made clearer by an illustration. Let us suppose for a moment that the indebtedness of the American File Co. had been exactly two hundred thousand dollars; that just half of this indebtedness, or one hundred thousand dollars, had been carried in Baltimore and one-half in Rhode Island, and that bonds had been issued to the exact amount of two hundred thousand dollars, and that one hundred thousand dollars' worth had been taken in Baltimore and one hundred thousand dollars' worth in Rhode

Island: and let us suppose the property of the company to be valueless, and that the Baltimore stockholders call upon the Rhode Island stockholders to contribute to the payment of the debts of the company, in other words, of the bonds. In that case it is plain that the Rhode Island stockholders might call upon the Baltimore stockholders for a similar contribution, and for every dollar the Baltimore stockholders or their representative, Chapman, received, he would have to pay a dollar to those from whom he received it.

Again, let us suppose a slightly different case. Let the indebtedness of the company as before be supposed to be two hundred thousand dollars. Let us suppose there are four stockholders, A, B, C and D, who are stockholders respectively to the amounts of one-tenth, two-tenths, three-tenths and four-tenths of the capital stock, and each is liable for the same proportion of the indebtedness of the company, which is represented by bonds of the company, held by A, B, C and D in the same proportions as they own stock, and suppose A to call on B, C and D to pay nine-tenths of his indebtedness of $20,000 (in other words of his bonds) or $18,000. It is evident that B, C and D could retaliate by calling upon A to pay one-tenth of their indebtedness of $180,000 (in other words of their bonds), and one-tenth of one hundred and eighty thousand dollars, which A would have to pay, is precisely the same amount which he would be entitled to receive, *i. e.*, eighteen thousand dollars. It is clear that in the case supposed the right to contribution possessed by any stockholder (a bondholder) would be so barren a one as to be undeserving the name of a right at all. Nor is the principle varied in the actual case under consideration by the fact that there are more stockholders than four, and that the actual amount of stock owned, indebtedness carried, and bonds held varies from the figures used as illustrations above. Let it once be conceded, as we have contended under Point I., that the Baltimore and Rhode Island stockholders owned the stock, and carried the indebtedness, and held the bonds substantially in the same proportions, and it does not seem to be necessary to multiply figures to prove the evident consequence that the right of any one stockholder to enforce a contribution from his co-stockholders would be so barren a right, that, as we have already said, it would be no right at all.

POINT III.

Robert Garrett & Sons have claimed that they own the bonds in question because they were pledged to them as collateral for loans by them to Kirkland, Chase & Co., of which firm Allan A. Chapman was a member, which loans were never repaid. But this claim of title cannot be allowed. In the first place, as we have shown, the firm of Kirkland, Chase & Co. had no title to these bonds, which were the property of Chapman as an individual, acting for himself and others, stockholders in the American File Co., and having no title in themselves could convey none by pledge or otherwise to Garrett & Sons. And in the second place, that the bonds were delivered to Garrett & Sons without consideration, and after the failure of Kirkland, Chase & Co., is proved by the testimony of Allan A. Chapman, John W. Garrett, D. C. Chapman, and Randolph Barton.

Testimony of Allan A. Chapman. Int. 8, 9, 10, 12, 13; p. 19. Int. 18, 19, 20, 21; p. 25.

Testimony of John W. Garrett. Int. 2, 4, 5; p. 11. Int. 12; p. 12.

Testimony of D. C. Chapman, pp. 28, 29.

Testimony of Randolph Barton. Int. 7; p. 30.

If Garrett & Sons have any title to these bonds it is the title they took from the assignees in bankruptcy of Allan A. Chapman.

POINT IV.

The assignees in bankruptcy of Chapman could acquire no better title to these bonds than was in Chapman himself, nor could they hold them with any rights which Chapman did not possess, or divested of equities which attached to them in Chapman's hands. True it is, as suggested by Judge Lowell in his opinion in this case, that the assignees might have refused to accept assets loaded with so heavy an onus as it is evident they knew these bonds to bear. (Testimony of Randolph Barton, Record page 30.) But in point of fact they did accept them, and assumed to deal with them in so far as to make them the subject, or one of the subjects, of an agreement between themselves as assignees and Garrett & Sons (Record page 41), and by thus dealing with them, and parting with them into the possession of third parties who might attempt to collect them, they assumed the same responsibility that Chapman would have assumed had he done so, and in that sense they placed themselves in Chapman's precise position as a stockholder, and became stockholders themselves, and became liable, not merely as assignees, but personally, as such stockholders. And we claim that a fair construction of the agreement of indemnity printed (see page 41 of the record), is that it was taken to protect themselves against just such a liability, and that it does so protect them. If Garrett & Sons secure a contribution from the Rhode Island stockholders, as prayed for, the Rhode Island stockholders will have a right to call on the assignees personally as stockholders as aforesaid, for contribution in proportion to their stock or their bonds, which, as shown in Point II., amounts to the same thing, and the assignees in their turn could call upon Garrett & Sons to indemnify them in a sum which, as shown under Point II., would be precisely the same as that which Garrett & Sons would have received. Thus producing a circuity of action which, as contended in a later point in this brief, it is against the policy of the law and the course of equity to allow.

POINT V.

The claim of Messrs. Garrett & Sons, that they have a right to levy the execution obtained as hereinbefore, and, as the pleadings set forth, upon the private property of the stockholders of the American File Co., is denied by William F. Sayles and others, who claim and insist that the distribution of said bonds among the stockholders of the company as hereinbefore mentioned, and the assumption by and payment of an equal amount of the debts of the company by the respec-

tive stockholders, was a just and equitable apportionment and payment by the several stockholders of the debts of the company as between themselves; that no one of the stockholders so taking said bonds as aforesaid could have any right to pursue his co-stockholders or their estates, on any of the bonds so taken and held by him, to compel payment of the principal or interest thereof.

POINT VI.

The appellants, Wm. F. Sayles and others, claim and insist that no purchaser of said bonds could acquire any other or greater right as against the stockholders of said company or their estates, than those subsisting between the stockholders themselves, that no stockholder holding such bonds could give or convey, by transferring or assigning said bonds to the assignee or tranferee, any right to enforce said bonds against the stockholders of the company or their estates, but only the right to enforce the same against the corporation and its property.

POINT VII.

Under this point the appellants, Wm. F. Sayles and others, aver and claim, that at the time when the said defendants took and received the bonds upon which said judgment was recovered, they had actual notice of all the circumstances under which said bonds were issued to the stockholders, and of all and singular the rights and equities subsisting between the stockholders of the company in relation thereto, or if not actual notice, that they were yet in the possession of such facts as should have put them upon inquiry which would have elicited the information, and that the defendants stand on no better position, and have no other or better rights than the said Chapman, or the said assignees in bankruptcy could or would have had against their co-stockholders in said company.

POINT VIII.

Under this point the appellants, Wm. F. Sayles and others, claim and insist that if the said defendants should be permitted to enforce and collect said judgment from the complainants as stockholders in said company, the said Chapman, and the assigned estate, and the assignees personally, would be bound to respond to the complainants for their just proportion thereof, as co-stockholders with the complainants, and also for a just proportion of the remaining bonds taken by other stockholders, the complainants, which said proportion would equal the whole amount of the judgment herein. And that having so responded, the said Garrett & Sons would, under their agreement and guaranty aforesaid with said assignees, be obliged to indemnify the said Chapman, the assigned estate, and the assignees personally. That such circuity of action should be restrained and prevented by this honorable Court. And that in equity and of right the said guaranty of said Garrett & Sons, inures to the benefit of the complainants.

POINT IX.

The stockholders of a corporation, liable in certain contingencies for its debts, stand in the relation of sureties to the corporation. Originally, it is doubtful if at law there could be enforced a contribution between sureties.

See Craythorne *vs.* Swinburne, 14 Ves. 159.
Also, Parsons on Contracts, vol. 1, p. 31. *Note d, 3d Edition.*

But it was enforced from the earliest times in the Courts of Chancery.

Story's Equity Jurisprudence. *Section* 492, *Et. Seq.*
DeColyear on Guarantees and Principal and Surety, pp. 338, 339.
Burge on Suretyship, p. 384.

The duty of contribution in *equity* arose from the equitable consideration that those who have *assumed* a common burden ought to bear it equally. It is not founded in, or dependent upon contract.

De Colyear, p. 339.
Burge, p. 384.
Story's Equity, vol. 2, p. 492.
Matthews *vs.* Aiken, 1 Comstock, p. 595.
Springer *vs.* Springer, 43 Penn. 81, 518.

It is immaterial in equity whether they become sureties for each other by one or different instruments.

Deering *vs.* Earl Winchelsea, 1 Cox, 318.
Craythorne *vs.* Swinburne, 14 Ves. 161.
De Colyear, p. 340, and cases cited.
Burge, p. 383.
Monson *vs.* Drokely, 40 Conn. 553.

Garrett & Sons, by their independent contract, agreed to stand in the place of Chapman and his firm. And it was for the purpose of protecting Chapman and his firm for the debts of the corporation for which they were bound as co-sureties with the other stockholders. In fact, Garrett & Sons thus agreed to stand as co-sureties to the creditors. This inures in equity to the benefit of all the other sureties who may be compelled to pay a debt of the corporation when the question of contribution arises. See text-books and cases above cited.

POINT X.

Sureties are not only entitled to contributions from each other for moneys paid in discharge of their joint liabilities for the principal, but they are also entitled to the benefit of all securities which have

been taken by any one of them to indemnify himself against such liabilities. And also to be subrogated to any securities held by creditors.

See Vail *vs.* Foster, 4 Comstock, 312.
4 Kent, 413, note.
Miller *vs.* Sawyear, 30 Vt. 412.
Leary *vs.* Cheshire, 3 Jones' Eq. 170.
Ramsay *vs.* Lewis, 30 Barb. 403.
Aldrich *vs.* Hapgood, 39 Vt. 614.
Paulen *vs.* Kaighn, 3 Dutch. 503.
Davis *vs.* Hoops, 33 Mass. 173.
De Colyear on Guaranty, etc., p. 356.
Story's Equity Jur., section 499.

A. PAYNE,
Solicitor for Appellants.

110-288

Supreme Court of the United States.

THE AMERICAN FILE COMPANY,
WILLIAM F. SAYLES *et al.*,
APPELLANTS,
vs.
ROBERT GARRETT & SONS,
APPELLEES,
and
WILLIAM F. SAYLES *et al.*,
APPELLANTS,
vs.
ROBERT GARRETT & SONS,
APPELLEES.

No. 110.

No. 111.

October Term, 1883.

BRIEF ON BEHALF OF THE APPELLEES.

JAMES TILLINGHAST,
JOHN K. COWEN,
E. J. D. CROSS,
Of Counsel for Appellees.

Supreme Court of the United States.

THE AMERICAN FILE COMPANY,
WILLIAM F. SAYLES *et al.*,
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APPELLEES,
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WILLIAM F. SAYLES *et al.*,
APPELLANTS,
vs.
ROBERT GARRETT & SONS,
APPELLEES.

No. 110.

No. 111.

October Term, 1883.

BRIEF FOR ROBERT GARRETT & SONS.

The following facts are conceded upon the record in both of these cases:

That the American File Company is a manufacturing corporation, existing and organized, and at the times of the transactions in question carrying on business in the State of Rhode Island, under a special charter granted by the General Assembly of that State, at its May session, 1863, and that the parties appellants with the corporation are its stockholders.

That the company or its officers never made and filed in the town clerk's office any return as required by statute, so as to exempt its stockholders from liability for its debts, and consequently it is admitted that these parties, appellants, as such stockholders, are jointly and severally liable for the judgment debt due Robert Garrett & Sons, unless pro-

tected therefrom by the matters set up in their bill in the second case, No. 111, and in their answer in the first case, No. 110, in the order in which the cases have been docketed on appeal.

That said Robert Garrett & Sons are judgment creditors of said corporation, under a final judgment in their favor against the corporation, rendered by the Supreme Court of Rhode Island, at its March Term, 1876, at Providence, for the sum of $132,611.43, debt as of June 23, 1876, and $51.20 costs of suit, upon which judgment execution issued against the corporation, and was duly returned wholly unsatisfied, no goods, chattels or real estate of the corporation being found whereon to levy it; and that this judgment was rendered upon the money bonds held by said Robert Garrett & Sons, regularly issued by said corporation, all dated January 1, 1870, and payable to bearer five years after date, with interest at the rate of ten per cent. per annum, payable semi-annually.

The bill in No. 111 was filed by the stockholders to enjoin the levy of this execution upon their private estates. It was originally filed in the Supreme Court of the State on the fifteenth day of November, 1876, and was removed by the defendants into the Circuit Court of the United States.

The bill in No. 110 is an original bill in the Circuit Court, filed April 6, 1878, by Robert Garrett & Sons against said corporation and its stockholders, to enforce the joint and several liability of the stockholders under the statutes of Rhode Island, for the payment of the above judgment debt and costs. They had also, by their answer to the first bill filed in the State Court on the thirty-first day of May, 1877, made this same claim by way of cross-bill under the State statute of April 20, 1876 (Chap. 563 of the Public Laws, sect. 10), which provides: "No "cross-bill shall be necessary in any suit in equity, but the

"defendant in any such suit may avail himself of any "matter of defence which would be open to him upon a "cross-bill, by setting up such matter in his answer; and "the Court upon the hearing of the case may make any "decree for or against either party—interlocutory or final— "warranted by the merits of the case, that it could make "in such suit had a cross-bill been filed therein."

The Manfacturing Corporation Act of Rhode Island was first enacted in June, 1847, and was taken almost literally from Chap. 38 of the Revised Statutes of Massachusetts of 1836. It was re-enacted in Rhode Island substantially without change (except as to the times of making and filing the annual returns), as Chap. 128 of the Revised Statutes of 1857, and as Chap. 142 of the General Statutes of 1872. It provides as follows:

STATUTES OF 1872.

"SECTION 1. The members of every incorporated manu- "facturing company shall be jointly and severally liable "for all debts and contracts made and entered into by such "company until the whole amount of the capital stock, "fixed and limited by the charter of said company, or by "vote of the company in pursuance of the charter, or by "law, shall have been paid in, and a certificate thereof "shall have been made and recorded in a book kept for "that purpose in the office of the town clerk of the town "wherein the manufactory is established, and no longer, "except as hereinafter provided."

"SEC. 11. Every manufacturing company included within "the provisions of this chapter shall file in the town "clerk's office of the town where the manufactory is estab- "lished, annually, on or before the fifteenth day of February, "a certificate signed by a majority of the directors, truly "stating the amount of its capital stock actually paid in, "the value as last assessed for a town tax of its real estate, "the value of its personal assets, and the amount of its "debts and liabilities, on the thirty-first day of December, "in the year next preceding."

"SEC. 12. If any of such companies shall fail to do so, "all the stockholders of such company shall be jointly and "severally liable for all the debts of the company then "existing, and for all that shall be contracted before such "notice shall be given, unless such company shall have "become insolvent, and assigned its property in trust for "the benefit of its creditors, in which case the obligation "to give such notice by the filing of such certificate, shall "cease."

"SEC. 20. Whenever the stockholders of any manufac- "turing company shall be liable, by the provisions of this "chapter, to pay the debts of such company, or any part "thereof, their persons and property may be taken therefor, "or any writ of attachment or execution issued against the "company for such debt, in the same manner as on writs "and executions issued against them for their individual "debts."

"SEC. 21. The person to whom said officers or stock- "holders may render themselves liable, as aforesaid, may, "instead of the proceedings aforementioned, have his "remedy against said officers or stockholders by a bill in "equity in the Supreme Court."

"SEC. 24. "No persons holding Stock in any manufac- "turing company as executors, administrators, guardians "or trustees, and no person holding such stock as collateral "security, shall be personally subject, by virtue of such "stock, to any liabilities as stockholders of such company; but the person pledging such stock shall be considered as "holding the same, and shall be liable as a stockholder "accordingly, and the estates and funds in the hands of "such executors, administrators, guardians, and trustees "shall be liable in their hands in like manner and to the "same extent as the deceased testator or intestate, or the "ward or person interested in such trust fund would have "been if they had respectively been living and competent "to act, and had held the same stock in their own names."

Section 2 of the act of April 20, 1876 (Chap. 555 of the Public Laws), provided as follows:

"SEC. 2. Section 20 of Chapter 142 of the General Stat-"utes is hereby repealed, the repeal whereof, however, shall "not affect any contract heretofore incurred, or any remedy "thereon; and Section 21 of the said Chapter is hereby "amended so as to read as follows, viz.: Sec. 21. Creditors "and others having claims against any manufacturing cor-"poration may have their remedy against the corporation "as is now provided by law, or may enforce their claims by "bill in equity against the said corporation, and the indi-"vidual members thereof, subject to the limitation herein-"before provided;" and, with this exception, the above provisions of chapter 142 for enforcing this liability remained unchanged until March 27, 1877, when the following amendatory act was passed as chapter 600 of the Public Laws.

"SECTION 1. "No person shall hereafter be imprisoned "or be continued in prison, nor shall the property of any "such person be attached upon an execution issued upon a "judgment obtained against a corporation of which such "person is or was a stockholder."

"SEC. 2. All proceedings to enforce the liability of a "stockholder for the debts of a corporation, shall be either "by suit in equity, conducted according to the practice and "course of equity, or by an action of debt upon the judg-"ment obtained against such corporation; and in any such "suit or action, such stockholder may contest the validity "of the claim upon which the judgment against such cor-"poration was obtained, upon any ground upon which such "corporation could have contested the same, in the action "in which such judgment was recovered."

"SEC. 3. All acts and parts of acts inconsistent herewith "are hereby repealed."

We will consider first the question raised by the bill filed by Robert Garrett & Sons against the American File Company and the individual stockholders. This, though filed subsequently to the bill of the stockholders, was the one in which evidence was taken, and presented all the points passed upon by Judge Lowell. It is first in order of the appeals—No. 110.

This bill was filed by Robert Garrett & Sons strictly in conformity with each and all of the above cited statutes, against the corporation and its stockholders to enforce their judgment recovered in the Supreme Court of Rhode Island. The judgment and debt are both admitted by the answer, and it is also admitted, as before stated, that the defendant stockholders are jointly and severally liable therefor, unless protected by the matters set up in the answer as a defence against the claims of the complainants.

I.

These matters, briefly stated, are as follows:

That Allan A. Chapman, one of the firm of Kirkland, Chase & Co., was himself a stockholder in this corporation; that the corporation, being in debt, funded its debt into bonds, which were taken by the stockholders generally in proportion to their stock, Chapman, however, agreeing to take not only his own portion, but also the portion of all other Baltimore stockholders who did not personally take their shares, and that these bonds now in suit were those so taken by Chapman; and that they were received by Garrett & Sons from him without consideration, and under such circumstances and with such notice that they are affected, in their hands, by certain alleged equities, which, it is asserted, they would have been subject to in the hands of Chapman; and that, under these equities, no recovery upon them can be had against the other stockholders.

Although, as will be shown later, the evidence totally fails to prove that there was any agreement which would raise an equity even as against him, yet we will assume for the sake of argument that the bonds were, at the time of their transfer to Garrett & Sons, held by Chapman, and were, while in his hands, subject to the alleged equities. Were they taken by Garrett & Sons, as averred in the answer of appellees, without consideration, and under such circumstances as to subject them in their hands to these alleged equities? If not, and Garrett &

Sons were in fact *bona fide* purchasers for value of the bonds, before maturity, and without notice, then this defence fails.

We submit that the evidence shows that full consideration existed for the transfer of the bonds; that Garrett & Sons were *bona fide* purchasers for value without notice of any equity now attempted to be set up.

The evidence establishes:.

First—That Messrs. Garrett & Sons, being bankers and merchants in Baltimore, had for many years large dealings with Kirkland, Chase & Co., loaning them from time to time large sums of money on collaterals of various kinds, but "with a general agreement that these collaterals "were held as security for the entire loan and transac-"tions, ... that is to say, that if a deficiency "occurred on one loan and a surplus existed on another "the surplus would be liable for any deficiency in case "payments were not fully made of such deficiency."

John W. Garrett, direct 1 to 7, p. 11, cross 1 to 3, p. 14.

Allan A. Chapman, cross 8 to 14, p. 21, 22. direct 25, 26, p. 23.

Second—That under this general agreement the bonds in question were first turned over by Kirkland, Chase & Co. to Garrett & Sons on or about May 30, 1872—long before their maturity—as security for a loan of $50,000 (originally made May 2, 1872), and in substitution for other collaterals originally pledged for that loan. This transfer was made before the failure of Kirkland, Chase & Co.

John W. Garrett, direct 8 to 13, p. 11, 12.

Allan A. Chapman, direct 8 to 17, p. 19, 20.
cross 1 to 7, p. 20, 21.
cross 16 to 21, p. 21, 22.

Exhibits R. G., Nos. 1, 2, 3, p. 33, 34, 35.

Compare Exhibit A. A. C., No. 4, p. 40.

Third—That at this time Messrs. Garrett & Sons had no knowledge or notice whatever that Chapman was, or had been, a stockholder in the File Company, or of any alleged arrangements between him and the other stockholders respecting these bonds.

John W. Garrett, direct 14, 15, p. 12, 13, cross 9, p. 15.
T. Harrison Garrett, direct 2 to 7, p. 16.
Robert Garrett, direct 2 to 7, p. 17.
Allan A. Chapman, cross 22, 23, p. 22.

Fourth—That at this time the indebtedness of Kirkland, Chase & Co. to Messrs. Garrett & Sons, secured by these bonds and other collaterals, was about $600,000, and that after exhausting all the other collaterals there will still remain an indebtedness to them of about $200,000 over the total amount of these bonds, should they be paid in full.

John W. Garrett, direct 8, p. 11, direct 17 to 20, p. 13, 14.
Allan A. Chapman, cross 12, p. 21, cross 26 to 28, p. 22.

Fifth—That after the bankruptcy of Kirkland, Chase & Co. their assignees, under the sanction of the bankruptcy court, settled with Messrs. Garrett & Sons, agreeing upon the values of and confirming their title to all the collaterals held by them, including these bonds.

John W. Garrett, direct 16, p. 13.
Exhibit R. G., No. 7 and No. 8, p. 45, 47.
Exhibit A. F., No. 1, p. 41.

On this state of facts it is submitted that Messrs. Garrett & Sons thus became the *bona fide* purchasers, for value, before maturity, without notice, of these bonds, and are entitled to hold and to enforce them, discharged of all equities, if any existed, between the original parties.

Swift vs. Tyson, 16 Pet., 1.
Goodman vs. Simonds, 20 How., 343.
White vs. Vermont, &c., R. R., 21 How., 575.
Bank of Pittsburg vs. Neal, 22 How., 96.
Maitland vs. Bank, 40 Md., 540.
Bank of Republic vs. Carrington, 5 R. I., 515.
Murry vs. Laidner, 2 Wall., 110.
Hotchkiss vs. Bank, 21 Wall., 354.
Humboldt vs. Bank, 92 U. S., 642.
Collins vs. Gilbert, 94 U. S., 753.
Cromwell vs. County of Sac., 96 U. S., 51.
Oates vs. National Bank, 100 U. S., 239.
Railroad Co. vs. Bank of Republic, 102 U. S., 14.

II.

Another defence set up to prevent recovery by Garrett & Sons against the stockholders is the sixth clause of the agreement made between Garrett & Sons and the assignees of Kirkland, Chase & Co. This agreement is of date May 18, 1874, and is found on pages 41, 42, Record.

It reads as follows: "Sixth: In consideration of the aforegoing acts on the part of said assignees, said Robert Garrett & Sons hereby release and abandon all rights and claims to dividends already declared and hereafter to be declared in the estate of Kirkland, Chase & Co. by said assignees or their successors; and said Robert Garrett & Sons likewise further agree, that whereas said assignees have been offered the sum of fifty cents on the dollar for certain bonds of the said American File Company (now held by Messrs. Robert Garrett & Sons, which were received as collaterals from Messrs. Kirkland, Chase & Co.,) and an indemnification against loss and damage of any kind as holders of certain stock of said American File Company as assignees of A. A. Chapman and Kirkland, Chase & Co., said Robert Garrett & Sons hereby agree to idemnify said assignees against loss or damage of any kind as holders of the stock aforesaid; and in consideration of said acts of

said assignees said Robert Garrett & Sons do also hereby agree to idemnify said assignees and said estate of Kirkland, Chase & Co. and the estate of A. A. Chapman against loss or damage of any kind for releasing their claims to the said bonds of the American File Company, now held by Messrs. Robert Garrett & Sons, and agree to hold said assignees and said estate harmless for said transfer and release."

It is submitted that the right of Garrett & Sons to recover, as holders of these bonds, is not affected by this agreement so made with the assignees of Kirkland, Chase & Co. and A. A. Chapman.

First. This agreement was taken as a personal indemnity to the assignees against *their liability* as assignees of a stockholder in the American File Company.

As such assignees, trustees or representatives of a stockholder, they were especially exempted from the effect of the statute of Rhode Island which imposed the liability upon stockholders where there was a failure to record the certificate required by law.

See sec. 24 Acts of R. I., 1872, cited *supra.*

The liability imposed upon the stockholders is statutory, and by the terms of the Act is to be discharged by them.

By the terms of the agreement between Garrett & Sons and the assignees of Kirkland, Chase & Co. the indemnity provided for was "against loss or damage of any kind as holders of the stock aforesaid."

The guarantee then being to the assignees in their representative capacity, and in terms limited to what they, as such, should be held responsible for, cannot extend further than their liability.

The claim has not been, and cannot be, asserted against the assignees. *In their representative capacity they are not liable.*

The general principle so clearly stated by JUDGE LOWELL in his opinion is, that assignees are not bound to accept onerous property. He says: "We are of opinion, however,

that under the statutes of Rhode Island neither assignees in bankruptcy nor the assets in their hands are liable to contribute under the circumstances stated in the Record, which are simply that they have in their possession the certificates of stock, and recite in the agreement that they are stockholders.* It does not appear how far, if at all, they have acted as stockholders, and it is certain they had nothing to do with contracting that debt.

In Massachusetts, where the law is as nearly as possible identical with that of Rhode Island, the liability was held not to attach, though the assignees had attended and voted at meetings of stockholders, and done other unequivocal acts of ownership. (Gray vs. Coffin, 9 Cush., 192.)

The general law of bankruptcy would give the same answer to the question. It is an anomaly, perhaps, but is the undoubted rule that assignees are not bound to accept onerous property. Its application to leasehold is familiar (Mills vs. Aurrol, 1 Smith Lead. Cases, 7 Am. Ed.,) 1116, and notes; and as to an onerous litigation or contract, Smith vs. Jordan, 6 Law Reporter, 313, Streeter vs. Sumner, 31, N. H., 542, Amory vs. Lawrence, 3 Clifford, 523.)

The rule has often been applied to shares in a Company liable to the onus of assessments, or calls as they are called in England, and would apply a fortiori to an unlimited liability. (See Re. Lond. and Prov. Teleg. Co., L. R., 9 Eq., 653, South Staffordshire R. Co. vs. Burnside, 5 Ex., 129, Levi vs. Ayres, 3 App. Cas., 342; Metropolitan Bank vs. Oxford, L. R., 10 Ex., 398.)

The peculiar statutory liability imposed upon shareholders in New England is not one which can be proved as a debt against a bankrupt's assets unless it is liquidated and ascertained by a decree in equity before the time for proving debts has gone by. (Kelton vs. Phillips, 3 Met., 62; Bangs vs. Lincoln, 10 Gray, 600; James vs. Atlantic Delaine Co., 11 N. B. R., 390.)

*To be accurate, the agreement recited that they were "holders of certain stock," which is a different thing from being stockholders.

It follows that Chapman, or the several members of his firm, according to the fact of ownership, would remain personally liable to contribute to the debts of the corporation notwithstanding their discharge in bankruptcy, because only provable debts are discharged, and because they would remain shareholders. (See Martin's Patent Co. vs. Morton, L. R., 3 Q. B., 306. Hastie's Case, L. R., 7 Eq., p. 3 and 4, Ch. 274.)"

It is plain, upon inspection of the contract between the plaintiffs and the assignees of Kirkland, Chase & Company, that the former did not undertake to become stockholders of the corporation, nor to indemnify Chapman or the members of the firm personally, but that out of abundant caution the assignees took an indemnity for themselves and the estate in their hands, and since the assignees are not liable, there is no claim or right to which the defendants can be subrogated.

It will be noted that the purpose of the assignees is stated in the testimony of Randolph Barton, one of them, to have been for their own protection. "We had been informed that there was a question as to the liability of the stockholders in that company, because of the failure to comply with some law of the State of Rhode Island requiring certain certificates or statements of the affairs of the Company to be filed, and as the settlement with the Messrs. Garrett was designed to be final and disembarrass the estate we represented from any connection with their claim, we inserted this clause of indemnity to protect us as assignees and as such holders of that stock from being called on for contribution" (p. 30, ans. to 5th direct interrogatory).

The contract itself is explicit upon this subject.

The assignees could not have been held liable upon this agreement for any claim of the stockholders of the File Company, who are all parties to these appeals. Such claim could not be set up against them. They never attended any meetings of the corporation. Their names never appeared upon the books, nor does the evidence show that

they acted in any way as stockholders, or treated or sought to treat the stock standing in Chapman's name as an asset of the estate. Their only action shown in evidence is their taking an indemnity against any liability upon the stock. As assignees of a bankrupt estate, and having the custody of the property of the bankrupts, they would not be held liable for any debts or liabilities of the corporation or of the stockholders.

"It has long been a recognized principle of the bankrupt law that the assignees of a bankrupt were not bound to take property of an onerous or unprofitable character—to accept, in fact, a *damnosa haereditas*. Assignees in bankruptcy were in this respect regarded as being in a very different position from that of the executors of a deceased testator. The former took the bankrupt's property by the operation of the law, which wrested it from the bankrupt and vested it in them; whilst on the other hand, executors claim title through their testator, and are therefore bound to perform his obligations to the extent of his assets."

Robson's Law of Bankruptcy, 2d ed., 375.

See also:

Rugely & Harrison vs. Robinson, 19 Ala., 404, 417.

Railway Company vs. Burnside, 5 Exchequer, 128, 137.

Furdooujee's case, 3 L. R., Ch. Div., 268.

Exparte Davis, 3 L. R., Ch. Division, 463.

The liability under the agreement certainly was only for "loss or damage" to the assignees as holders of the stock standing in the name of Chapman.

The extent of the liability of Chapman individually as stockholder is another matter. It is determined by the amount of the indebtedness of the corporation. It depends on the amount of assets of the corporation, the solvency of the various stockholders who are to contribute. In addition to this, there is not a particle of evidence to show

that at the date of the failure of Kirkland, Chase & Co. the File Company was not abundantly able to pay all its debts. The liability is therefore contingent. It is also in the nature of a penalty imposed upon stockholders in a corporation which has not complied with the requirements of law by filing certain certificates. The cases cited by Judge Lowell, viz:

Kelton vs. Phillips, 3 Met., 61.
Bangs vs. Lincoln, 10 Gray, 600.
James Adm'r vs. Atlantic Delane Co., 11 N. Bank. Reg. 390,

conclusively establish the doctrine that such claims cannot be proven against an estate in bankruptcy.

This is entirely aside from the fact that the assignees or the estate in Maryland cannot be held liable under the Rhode Island statute, so that no claim could be made upon the assignees. The statute cannot have an extra-territorial effect.

Errickson vs. Nesmith, 15 Gray, 221.
Same vs. Same, 4 Allen. 233.
Halsey vs. McLean, 12 Allen, 438.
Derrickson vs. Smith, 3 Dutcher, 166.
Bank of Plymouth vs. Price, 33 Md., 487.
Lawler vs. Burt, 7 Ohio State, 341.
Kritzer vs. Woodson, 19 Mo., 329.
Cable vs. McCune, 26 Mo., 371.

Second—The estate not being liable it follows that Chapman has not been released from whatever liability was imposed upon him as a stockholder.

Sec. 5119 Rev. Stat. U. S. provides that a discharge in bankruptcy releases the bankrupt only from "debts, claims, liabilities and demands which were or might have been proved against his estate in bankruptcy."

That Chapman alone was the owner of the stock appears from the evidence in the case. He subscribed to the stock, it stood in his name, he was active in the management of the company. The firm of Kirkland, Chase & Co. were not

stockholders or interested in the stock. The money to take up the notes of the File Company discounted in the Baltimore banks was the money of the firm of Kirkland, Chase & Co.; they were therefore the owners of the bonds issued by the File Company to fund these notes.

See testimony of A. A. Chapman.

Ans. to 5th direct, p. 18.
Ans. to 48, 49, 50, 51, direct, p. 26.
Ans. to 40, 41, cross, p. 27.
John W. Garrett, direct 12, p. 12.

Consequently the bonds were not affected by any equities between Chapman individually and the other stockholders. The mere fact that they were purchased by the firm because Chapman was a stockholder, the firm itself not being interested in the stock, could not in the absence of any agreement, subject the bonds to such equities.

Third—But even assuming that the agreement between Garrett & Sons and the assignees is of such a nature that it can enure to the benefit of the stockholders in these suits, who may, on paying the judgment recovered by Garrett & Sons against the File Company, be entitled to contribution from the stockholders, still they cannot avail themselves of it to any other or greater extent than the assignees could. If these claims *were provable* against the bankrupt estate in the hands of the assignees, the "loss or damage" resulting to the assignees and the estate would be the amount payable to the persons proving them. The amount would be determined by the entire claims against Chapman's individual estate in the hands of the assignees. This estate amounts only to the sum of $562.22.

Exhibit R. B., No. 1, p. 43.

The whole case of the stockholders rests upon the written agreement between the assignees and Garrett & Sons, made May 18th, 1874, and it is thus stated in their answer.

"And these respondents further answering claim and insist that if the said complainants should be permitted to enforce and collect said judgment from these respondents

as stockholders in said company, the said Chapman, Kirkland, Chase & Co., and the assigned estates, would be bound to respond to these respondents for their just proportion thereof as co-stockholders with these respondents, and also for a just proportion of the remaining bonds taken by other stockholders than these respondents, which said proportion would equal the whole amount of the judgment herein; and that having so responded, the said Garrett & Sons aforesaid would, under their agreement and guaranty aforesaid with said assignees, be obliged to indemnify the said Chapman, Kirkland Chase & Co., and the assigned estates; that such circuity of action should be restrained and prevented by this honorable court; and that in equity and of right the said guarantee of said Garrett & Sons enures to to the benefit of these respondents."

Answer, page 9 of Record.

Let us examine the language of the sixth section of the guaranty agreement, which is thus alleged to enure to the benefit of the stockholders.

The language of that section is as follows:

"And said Robert Garrett & Sons likewise further agree, that whereas said assignees have been offered the sum of fifty cents on the dollar for certain bonds of the American File Company, now held by Messrs. Robert Garrett & Sons (which were received as collaterals from Messrs. Kirkland, Chase & Company), and indemnification against loss or damage of any kind as of holders of certain stock of said American File Company, as assignees of A. A. Chapman and Kirkland, Chase & Company, said Robert Garrett & Sons hereby agree to indemnify the said assignees against loss or damage of any kind as holders of the stock aforesaid."

It will be seen that this is a simple agreement to indemnify the assignees against loss or damage by reason of their holding certain certificates of stock, and the utmost that can be claimed as the measure of Garrett & Sons' liability under this contract, is the amount of loss or

damage which the assignees can suffer. The assignees, it is admitted, are not personally responsible, and it is only the "assigned estate" in their hands that is liable. Under the proof in this case the largest amount which the assignees could be called upon to pay as "holders of the stock aforesaid," is the balance remaining in their hands after paying preferred debts against the estate of A. A. Chapman. The full amount of this balance is $562.22, and and a small interest in some lands in West Virginia not exceeding $2,500 in value. See testimony of Randolph Barton, p. 32 Record.

If this is all that the assignees could be compelled to contribute toward paying the debts of the American File Company, and if this is the extent of possible loss or damage that the estate of A. A. Chapman in their hands can suffer by reason of the assignees holding the certificates of stock, then the Garretts cannot be called upon, under any circumstances, to pay more than that amount. If, therefore, the "co-stockholders," to avoid circuity of action, can have the indemnity agreement enure to their benefit, they cannot claim more from the Garretts than the payment of the utmost damage or loss which the assignees could suffer; they cannot claim more from the Garretts than the original parties with whom the Garretts contracted.

It is a mistake to say that by a simple agreement of indemnity, the Garretts became responsible as stockholders of the American File Company, or become liable to pay such debts of that Company as might be proved against the assignees, as holders of its stock. The Garretts do not agree to assume the liabilities of the assignees as stockholders, they only agree to protect them against such loss as they might sustain from holding said certificates of stock, they do not assume to pay the debts of the assignees, if any, as holders of the stock, they only agree to indemnify the assignees against loss or damage. The distinction is a vital one. Had the Garretts agreed to pay all debts, which could be proved against the estate of A. A. Chapman, then the measure of their liability would be the amount of debts prov-

able against that estate; but this they did not do, they only agreed to indemnify the assignees of Chapman against such damage as his estate in their hands could suffer, and that we have shown, cannot exceed the amount heretofore named. There is a wide difference between an agreement to pay or be liable for debts which might be proved against an insolvent trust estate, and a contract to indemnify the trustee of the estate against loss from a certain claim; in the former case the liability is the amount of debts provable, and in the latter case it is the amount of loss sustainable by the estate, and that can never be greater than the amount of the estate.

III.

But beyond this the evidence discloses that there is no merit in the defence set up that the bonds were to be taken by the stockholders in proportion to their holding of stock. Whatever may have been the desire or intention when it was determined to issue the bonds, this was found impracticable, and was abandoned.

First—There is no evidence that the subscription papers alleged in the answer (p. 7) to have been signed by the stockholders, agreeing to take bonds in such proportion, ever existed.

The resolutions of the corporation under which the bonds were issued make no reference to such agreement, On the contrary, they concede to a stockholder "the privilege of subscribing for his proportion of said bonds, which privilege shall expire unless taken and paid for before April 1, 1870. The surplus not then taken shall be disposed of in the order of applicants."

Exhibit W. F. S., "F.," p. 62.

Second—An examination of the list of bondholders (Exhibit W. F. S., "E.," p. 61) shows that nine of the defendants took no bonds at all, and sixteen of them took none of the second issue.

An examination of this list also shows that although the two issues of bonds were nearly of equal amounts, the parties who took the second issue took them in very different proportions from the proportions in which they took the first issue.

Third—Nor were the bonds taken in proportion to their stock.

The whole stock issued was 3,002½ shares=$300,250 at par.

W. F. Sayles, cross 27, p. 54.

The total amount of bonds issued was $192,700.

Exhibit W. F. S. "E.," p. 61.

Thus giving $64.18 of bonds to each share of stock. Wm. F. Sayles had 202½ shares=$20,250 at par.

Wm. F. Sayles, cross 23, p. 54.

This would make his proportion of bonds $12,996.45. The list shows he actually took $7,800 + $11,400=$19,200.

Just how much stock Chapman held, the evidence does not clearly show. His power of attorney, Oct. 22, 1868 (Exhibit W. F. S. "D.," p. 60), states it at 220 shares, and this is a later date than any of his certificates, (Exhibit R. G., No. 5, p. 36; A. F. No. 2, p. 42), which in the aggregate give him 595 shares, of $100 each. The difference is probably to be accounted for by intermediate transfers. For this being a substantive part of the appellants case, we are entitled to assume, in the absence of all evidence to the contrary, that the power of attorney, given for the purpose of voting at a corporation meeting is correct.

This being so, Chapman's proportion of the bonds apportioned to his stock would be but $14,119.60 instead of the $81,500 actually taken by him.

But even assuming he held the whole 595 shares at the date of the issue of the bonds his proportion of the bonds would be but $38,187.10.

It is admitted that Chapman took all the bonds for all the Baltimore stockholders, except one—Woods.

Answer p. 7, Chapman, cross 29, p. 22, 23.

For the excess of bonds taken by him over the proportion due his stock he certainly could have recovered against the other stockholders.

IV.

The judgment was recovered by Garrett & Sons in the Supreme Court of the State of Rhode Island on June 23d, 1876. As the law then stood, they could have had execution on the same, against the property of the stockholders, in the same manner as on writs or executions issued upon judgments against them for an individual debt.

See Sec. 20, Act of 1872, cited *supra*.

The Act of March 27, 1877, took away the right of execution (sec. 1), and by section 2, limited the remedy to a suit in equity, or action of debt on the judgment against the corporation, providing "That in any such suit or action such stockholder may contest the validity of the claim upon which the judgment against such corporation was obtained, upon any ground upon which such corporation could have contested the same, in the action in which such judgment was recovered." See Act cited *supra*.

First—If it is claimed by the appellants that by force of the first section of the Act of March 27, 1877, the stockholders are entitled to the injunction prayed for in the bill filed by them on November 15, 1876, (in case No. 111), there are insuperable ojections to the granting of the relief sought. This bill was pending at the time of the passage of this Act of March 27, 1877. At this time, Robert Garrett & Sons were creditors of the corporation upon the judgment obtained, and had, under the existing Statutes of 1872, the right to issue execution upon this judgment under the 20th section, or file their bill in equity under the 21st section.

The judgment against the File Company was conclusive against it and all its stockholders. The Act of 1877 seeks to give to the stockholders, so situated, the right to contest again the judgment obtained against the corporation, upon any ground that the corporation might have contested the same.

This Act, it is submitted, is unconstitutional and void, inasmuch as if valid it most materially impairs, if it does not entirely destroy, all remedy for enforcing their judgment against the stockholders.

In this respect it cannot be distinguished from

McCracken vs. Hayward, 2 How., 608.
Hawthorne vs. Calef, 2 Wall., 10.
Van Hoffmann vs. City of Quincy, 4 Wall., 535.
Walker vs. Whitehead, 16 Wall., 314.
Edwards vs. Kearzey, 96 U. S., 595.

See also Ochiltree vs. Railroad Company, 21 Wall., 249.
Louisiana vs. New Orleans, 102 U. S., 203.
Penniman's case, 103 U. S., 714.

The remedies substituted by the second section do not relieve the act of this objection, because:

1. They are no sufficient equivalent for the former remedy.

2. If they were, the second section itself, as to judgments existing at the time of the passage, is unconstitutional inasmuch as it reopens the judgment in behalf of stockholders, and grants them a new trial upon the merits of the original claim and cause of action, compelling the creditor to litigate the matter anew.

As the law stood when this debt was contracted, and when this judgment was rendered, it was well settled that the judgment against the corporation was conclusive upon the stockholders and that the stockholders could not be allowed to appear and defend the case even in their own names. The corporation was the only party defendant of record that could be recognized or heard; and this was so under the Massachusetts amended act of 1851, under which the stockholders whom the creditor intended to seek to hold liable were entitled to be summoned in the case.

Holyoke Bank vs. Goodman Paper Co., 9 Cush., 576.
Farnum & Ballard Vale Machine Shops, 12 Cush., 507.
Compare Lane vs. School District 10, Met., 462.